

**CALIFORNIA BOARD OF ACCOUNTANCY**

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**DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY**

FINAL

**MINUTES OF THE
March 22-23, 2007
BOARD MEETING**

Sheraton Pasadena Hotel
303 East Cordova Street
Pasadena, CA 91101
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I. Call to Order.

President David Swartz called the meeting to order at 1:32 p.m. on Thursday, May 22, 2007, at the Sheraton Pasadena Hotel and the Board heard Agenda Items XIII.B.1. and XIII.D. The meeting adjourned at 4:20 p.m. President David Swartz again called the meeting to order at 8:10 a.m. on Friday, March 23, 2007, and the Board and ALJ Christopher Ruiz heard Agenda Item XII.A. The Board convened into closed session at 9:15 a.m. to deliberate and also to consider Agenda Items XII.B-K. The meeting adjourned at 2:20 p.m.

Board Members**March 22, 2007**

David Swartz, President	1:32 p.m. to 4:20 p.m.
Donald Driftmier, Vice President	1:32 p.m. to 4:20 p.m.
Robert Petersen, Secretary-Treasurer	1:32 p.m. to 4:20 p.m.
Ronald Blanc	1:32 p.m. to 4:20 p.m.
Richard Charney	1:32 p.m. to 4:20 p.m.
Angela Chi	1:32 p.m. to 4:20 p.m.
Ruben Davila	1:32 p.m. to 4:20 p.m.
Sally Flowers	1:32 p.m. to 4:20 p.m.
Lorraine Hariton	1:32 p.m. to 4:20 p.m.
Thomas Iino	1:32 p.m. to 4:20 p.m.
Clifton Johnson	1:32 p.m. to 4:20 p.m.
Leslie LaManna	1:32 p.m. to 4:20 p.m.
Bill MacAloney	1:32 p.m. to 4:20 p.m.
Marshal Oldman	Absent
Stuart Waldman	1:32 p.m. to 4:20 p.m.

Board MembersMarch 23, 2007

David Swartz, President	8:10 a.m. to 2:20 p.m.
Donald Driftmier, Vice President	8:10 a.m. to 2:20 p.m.
Robert Petersen, Secretary-Treasurer	8:10 a.m. to 2:20 p.m.
Ronald Blanc	8:10 a.m. to 2:20 p.m.
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Marshal Oldman	8:10 a.m. to 2:20 p.m.
Stuart Waldman	8:10 a.m. to 2:20 p.m.

Staff and Legal Counsel

Patti Franz, Chief, Licensing Division
Michael Granen, Deputy Attorney General, Board Liaison
Mary LeClaire, Executive Analyst
Pete Marcellana, Practice Privilege Analyst
Kris McCutchen, Initial Licensing and Practice Privilege Manager
Greg Newington, Chief, Enforcement Program
Dan Rich, Assistant Executive Officer
George Ritter, Legal Counsel
Theresa Siepert, Manager, Administration Division
Carol Sigmann, Executive Officer
Jeanne Werner, Deputy Attorney General, Department of Justice
Aronna Wong, Regulation/Legislation Analyst

Committee Chairs and Members

Roger Bulosan, Chair, Qualifications Committee
Harish Khanna, Chair, Administrative Committee

Other Participants

Bruce Allen, California Society of Certified Public Accountants (CalCPA)
David Asem, Countrywide
Sheri Bango, American Institute of Certified Public Accountants (AICPA)
Ken Bishop, Chair, NASBA CPA Mobility Task Force
Courtney Bolin Nash, Center for Public Interest Law (CPIL)
David Costello, President & CEO, NASBA
Mike Duffey, Ernst & Young LLP
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)

Olaf Falkenhagen
Ken Hansen, KPMG LLP
Wesley Johnson, Chair, NASBA
Brianna Lierman, Legislative Analyst, Department of Consumer Affairs
Carl Olson, Chairman, Fund for Stockowners Rights
Richard Robinson, E&Y, DT, PWC, KPMG
Hal Schultz, California Society of Certified Public Accountants (CalCPA)
Alan Shattuck
Antonette Sorrick, Deputy Director, Department of Consumer Affairs
Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)
David Tolkan, Society of California Accountants (SCA)
Mike Ueltzen, American Institute of Certified Public Accountants (AICPA)

II. Board Minutes.

A. Draft Board Minutes of the January 19, 2007, Board Meeting.

The draft Board minutes of the January 19, 2007, Board meeting were adopted on the Consent Agenda. (See Agenda Item XIII.C.)

III. Report of the President.

Mr. Swartz introduced new Board members, Ms. Lorraine Hariton and Mr. Marshal Oldman. He announced that Ms. Hariton had spent more than 25 years in the technology sector as a senior executive at IBM and Network Computing Devices. Previously, she was President and CEO of Apptera and CEO of Beatnik, Inc., where she remains as Chairman. She is also on the board of IODA. Mr. Swartz added that Ms. Hariton is Chairman Emeritus of the Forum for Women Entrepreneurs and Executives and serves on the Board of the Entrepreneur's Foundation, the National Advisory Board of the Stanford Clayman Institute for Gender Research, the Advisory Board of the Women's Technology Cluster, and on the Executive Committee of the National Center for Women and Information Technology and ION. She is also a fellow of the American Leadership Forum. She has an M.B.A. from Harvard Business School and a B.S. in mathematical sciences from Stanford University.

Mr. Swartz announced that Mr. Oldman is a partner in the trust and probate firm, Oldman, Cooley, Sallus, Gold, Birnberg & Coleman and has been there since 1976. He also had been a member of the Legislative Monitoring Committee of the Los Angeles County Bar Association. Mr. Swartz stated that Mr. Oldman is involved in drafting probate related legislation as a member of the Executive Committee of the estate planning, trust and probate section of the California State Bar. Mr. Oldman is also a member and treasurer of the Cowboy Lawyers Association. He has a B.A. from the University of Southern California and a J.D. degree from the University of California at Los Angeles.

It was moved by Mr. Blanc, seconded by Ms. Flowers, and unanimously carried to adopt the responses to the focus questions with the additions noted above.

B. Cross-Border Practice.

1. NASBA and AICPA Presentation Related to Cross-Border Practice.

Mr. Swartz announced that most of the afternoon would be devoted to the issue of cross-border practice. He introduced Mr. David Costello, President and CEO of NASBA.

Mr. David Costello stated that the panel appreciated the opportunity to make its presentation to the Board. He introduced Mr. Ken Bishop, Chair of the NASBA Mobility Task Force. Mr. Costello additionally introduced Mr. Wesley Johnson, Chair of NASBA. He stated that Mr. Johnson was doing a tremendous job with the mobility effort.

Mr. Costello stated that NASBA's highest priority is providing public protection. He stated that there is a myth that consumer protection and mobility is an either/or proposition.

Mr. Costello stated that mobility is not a new concept. In 1974, the mobility of CPAs throughout the country was suggested. The idea of a national licensee database was also suggested, but the technology did not exist at that time. In 1998, the Uniform Accountancy Act was revised to include substantial equivalency, yet 10 years later, substantial equivalency is not fully understood. Substantial equivalency is about each state's law being substantially equivalent to the Uniform Accountancy Act's Model, not to other states' laws. Mr. Costello indicated that the problem is that states compare themselves to other states and raise the barriers.

Mr. Costello further stated that consumers want access to service and access to their preferred providers of service. CPAs need access to their clients and clients need access to their CPAs, wherever they reside. He stated that he believed that consumer choice of competent service providers is a paramount factor, whether that provider resides in or out of the state. Mr. Costello stated that he also believed that notification is not the key factor in protecting the public and that notification penalizes the complying CPA, not the non-compliant CPA.

Mr. Costello stated that one advantage of the "no-notice no-fee" approach is that it allows the reallocation of resources to the enforcement area, where it can have the most impact. Mr. Costello stated that under the revised Section 23, out-of-state CPAs must consent to the visiting state's administrative jurisdiction. Under this

approach, the enforcement emphasis is on the CPA who does something wrong. He stated that when he was the Executive Director of the Board of Tennessee, over 99 percent of the CPAs complied with the law. Yet, Tennessee continued to spend most of its time tracking the right doers instead of the wrong doers. He also indicated that the implementation of NASBA's accounting licensing database would facilitate efforts to put the emphasis on enforcement.

Mr. Costello concluded by asking that California join NASBA in the nationwide effort to implement the most effective mobility practice provisions for CPAs with an emphasis on the enhanced protection of the public interest.

Mr. Wesley Johnson thanked the Board for the opportunity to be a panel member. He stated that he retired from public accounting in January 2001, after 36 years of serving the public and his clients primarily in the audit area. He had worked with NASBA for over 10 years and was elected Chair in October 2006. He stated that he had served the Maryland State Board of Public Accountancy for two terms, serving as its Chair for most of that time.

Mr. Johnson stated that NASBA is an organization whose members are the state boards of accountancy, and its purpose is to enhance the effectiveness of state boards. The participation of past and present members of California's Board have made a big difference to NASBA.

Mr. Johnson stated that the new provisions for the Uniform Accountancy Act provide strong language and support for the enforcement of regulations and laws. The amendment had received strong support from NASBA's Board of Directors, NASBA's Uniform Accountancy Act Committee, and the AICPA. He additionally indicated that he believed that mobility was NASBA's number one priority. He added that by "mobility" he meant the ability for CPAs to cross state lines in order to serve clients without the impediments of numerous requirements for notice, reciprocal licensing, and other processes and procedures.

Mr. Johnson stated that because he believed this issue was important, he had formed NASBA's CPA Mobility Task Force and assigned committee members from small, medium, and large firms. Additionally, committee members included CPAs that were currently practicing and retired from various parts of the country. He added that a project manager had been hired to help carry on the work of the Task Force. He then indicated that NASBA was prepared to provide resources to state boards including testimony before state boards and state legislatures to assist states in passing these mobility provisions.

Mr. Johnson stated that the mobility provisions are important because currently, the lack of uniformity is creating problems. Currently, requirements exist that are confusing to CPAs across the country. The requirements do not promote public protection and do not allow licensees to move quickly in order to serve their clients effectively.

Mr. Johnson indicated that the project is gaining momentum. There are seven states that are in the process of including the new provisions in their laws and rules and seventeen additional states have taken substantial steps to adopt the mobility provisions. He stated that he believed that at least 30 states will have either implemented or taken steps to implement mobility by October 2007.

Mr. Johnson then provided several examples of CPAs that have experienced frustration with the current impediments to mobility and stated that these CPAs are dedicated to the practice of public accountancy.

Mr. Johnson concluded by asking the Board to join NASBA in the effort to make mobility successful.

Mr. Ken Bishop, Chair of the NASBA CPA Mobility Task Force, thanked the Board for the opportunity to participate as a panel member. He stated that he had spent over 30 years in government serving in the area of public protection including 25 years in law enforcement, ending his career as the Assistant Director of the Missouri Department of Public Safety and Commander of the Missouri Major Case Squad. In 1998, he was appointed as the Executive Director of the Missouri State Board of Accountancy where he served until January 2007, before joining NASBA. In November 2006, he was appointed as Chair for the CPA Mobility Task Force. Further, he acknowledged his respect and close working relationship with Ms. Sigmann.

Mr. Bishop reported that the introduction to the Exposure Draft states that the new language achieves the goals of enhancing public protection, facilitating consumer choice, and supporting the efficient operations of capital markets.

Mr. Bishop stated he had experience in the transition to mobility because Missouri was one of four states in the country that had implemented mobility. He stated that Missouri had gradually transitioned from temporary and incidental practice rules to mobility with notification and fee. He stated that Missouri then moved to mobility without notification or fee on a quid-pro-quo basis with neighboring states before implementing full Section 23 language a couple of years ago. The Missouri Board found that it was not

problematic to discipline a CPA because the receipt of the complaint essentially served the same purpose as notification.

Mr. Bishop stated that the Missouri Board discovered that mobility with notification had costs associated with it. It required staff resources to properly track, file, and maintain the parameters of the notification. He further stated that in Missouri, as in most states, there are open records requirements in which collected information must be made available to the public. Therefore, the quick cross-border practice notification was burdensome in terms of the record keeping requirements and the costs associated with those requirements. The notification rules were also confusing to both CPAs and the public. He stated that when Missouri eliminated notification and fee rules, the Missouri Board found that it freed up staff resources for public protection work such as monitoring CPE, monitoring peer review, and assisting in the complaint handling process.

Mr. Bishop stated that he would provide a brief explanation of the changes in the March 2007 version of the Section 23 language from the December 2006 version. He stated that after the release of the December 2006 Section 23 Exposure Draft, it was apparent that NASBA and the AICPA leadership had different and potentially conflicting interpretations of how firms were affected in the new mobility language. Based on the disparate interpretations, the leadership of NASBA and the AICPA met to discuss the differences and how to resolve them. The leadership of NASBA, the AICPA, and the UAA Committees reviewed concerns and adopted changes.

Mr. Bishop stated that he believed that the new language specifically addressed different scopes of practice. He additionally stated that the new language clarifies when firm registration is required. The AICPA initially believed that there should not be any firm registration requirement. The AICPA's position was that it wanted the new Section 23 language to be equally valuable to small firms or sole practitioners as it would be to large firms. Ultimately, NASBA and the AICPA came to agreement.

Mr. Bishop then provided a synopsis of what the new Sections 23, 7, and 14 intended to achieve. He stated that CPAs from substantially equivalent states or who individually meet the substantial equivalency requirements would be able to enter and practice in the visited state without notification or fee. This language was in the December 2006 Exposure Draft, and it had not changed. Mr. Bishop further stated that CPAs practicing through substantial equivalency would be subject to the jurisdiction of the visited state and must comply with the laws of the visited state.

In addition, Mr. Bishop stated that CPAs practicing through substantial equivalency and performing attest services or PCAOB engagements must do so only through a firm registered in the visited state. He further stated that the individual CPA associated with the firm must be either licensed in the state or considered to be substantially equivalent. He indicated that this was a change in that most states had a requirement that if a firm was registered in a state, there had to be a CPA licensed in that state that was associated with the firm. This changes the language to say that the firm has to be registered, but the CPA associated with that firm can be a CPA that is practicing through substantial equivalency. The AICPA had articulated a valid concern that without the language change, sole proprietors would be treated differently and arguably unfairly. The change in language gives the same privilege to a sole proprietor that is given to members of a larger firm.

Mr. Bishop added that before they changed the law in Missouri, they had problems with mobility. For example, if either the CPA or the client moved to a neighboring state, it was difficult for the CPA to continue to serve that client.

Mr. Bishop concluded by thanking the Board for the opportunity to highlight and clarify what the language of the new Section 23 does.

Mr. Swartz introduced Mr. Michael Ueltzen, a CPA in Sacramento that serves on the AICPA Mobility Task Force. Mr. Swartz stated that Mr. Ueltzen would present the AICPA's point of view and illustrate the differences between the AICPA and NASBA proposals.

Mr. Costello stated that the AICPA and NASBA had discussed their differences and that both organizations were in agreement with the revised Section 23 language.

Mr. Ueltzen reiterated that both organizations were in agreement and that he had provided a handout for consideration. **(See Attachment 11.)** He stated that 10 years ago, he was a member of the National Steering Committee, a joint committee of NASBA and the AICPA. At that time, the goal of the Committee was the implementation of the UAA. After joining the National Steering Committee, he made a presentation on Section 23 at a joint conference of the AICPA and NASBA. The goal of that conference was to have substantial equivalency implemented in 40 states by 2000. Today, only four states have implemented some form of substantial equivalency and the ability to cross borders.

Mr. Ueltzen stated that he would be presenting the results of his analysis and participation on the AICPA Mobility Task Force and

would share his view as a practicing CPA in California. He stated that he had a small CPA firm that files multi-state tax returns and practices in multiple states.

Mr. Ueltzen indicated that he believed the current system is not working and that CPAs inadvertently violate state laws because of the myriad of different rules and regulations. He stated that theoretically, a CPA should be licensed in 32 states if he or she files an individual tax return because many clients have multi-state tax returns. If a CPA files a business tax return, he or she should be licensed in 33 states. Ten states have a requirement that if a CPA teaches CPE, registration or licensure is required. Thirty states have a requirement that if a CPA is providing consulting services, registration or licensure is required. It also depends on how services are rendered. Twenty-five states have a rule that if the CPA or firm has a form of on-line presence, registration is required.

Mr. Ueltzen stated that he also practices as a forensic accountant. He stated that if he receives a call from a law firm in South Carolina to retain his services, at that moment in time, he would have begun practicing despite not being registered in South Carolina. He further stated that the ability to comply with different rules in different states with different interpretations is unduly burdensome. He stated that his firm has three staff that practice in Oregon. One individual with a bachelors degree was required to obtain a license that then required him to comply with the continuing education, ethics, and filing requirements in Oregon. He was able to obtain the Oregon license through reciprocity because he had been practicing for over 10 years. Another partner who has 150 hours of education was required to obtain a license because he did not follow the pathway accepted by Oregon. Mr. Ueltzen stated that he has 150 hours of education and a license in Nevada. He further stated that because he had a license in Nevada, a substantially equivalent state, he was only required to obtain a practice permit.

Mr. Ueltzen stated that a proposal from Colorado required that a CPA choose the six-month time period within a given year that he or she intended to practice. This would require the CPA to time his practice permit such that the CPA was covered for the period of time that the license was filed. He indicated that it is often difficult to forecast the filing of tax returns and that if the tax return was extended, the CPA would be in violation because he or she practiced outside of the filing window. In addition, the CPA cannot hold himself out as a CPA with a practice permit.

Mr. Ueltzen stated that Louisiana requires a license. If a CPA practices in Washington, the CPA is only required to obtain a practice permit if he is doing audit work, has a physical presence, and there is

a percentage of work test requirement. In Ohio, a CPA is free to come and go; there are no barriers and a practice permit is not required. Mr. Ueltzen admitted that his firm places three or four telephone calls over a period of time to determine the licensing or permit requirement of a given state. When the firm obtains the answer it is looking for, the finding is memorialized and the firm moves forward with its work.

Mr. Ueltzen stated that another element of non-workability is that there is sometimes a six-month delay for the CPA to obtain a permit or license. From a practical standpoint, a CPA cannot respond timely to a client's request for information and services without violating a state's laws. Mr. Ueltzen questioned whether all of this actually provided for consumer protection.

Mr. Ueltzen stated that under the proposed change, a CPA would be subject to a visiting state's regulations and must comply with that state's laws. There would also be a referral system in place such that if a visiting CPA violates state law, the state board of the visited state would be able to find the CPA and refer the case to the CPA's home state for discipline.

Mr. Ueltzen stated that California had a higher standard than some other states for a visiting CPA to obtain a practice privilege. The reason is that California requires that a CPA coming to the state to practice have 150 hours of education. Yet, an alternative pathway is available to California candidates to become licensed with 120 hours of education. Mr. Ueltzen indicated that he believed that in some respects, California had created an arbitrary artificial barrier.

Mr. Ueltzen then stated that he would share the work conducted by the AICPA Mobility Committee. The work included an in-depth analysis of current laws, rules, and regulations. The Committee compared the licensing of the CPA profession to other regulations. The Committee obtained input from stakeholder groups, NASBA, sole practitioners, small firms, and medium firms. Each of the different sized firms claimed that it had the greatest burden in terms of complying with the various laws. The national firm moves significant people across state lines. The small firm has to use its limited resources to determine the different laws and regulations. There are different dynamics, different complexity.

Mr. Ueltzen stated that the Committee developed the over-arching principles for a mobility model. The most significant principle was that the model must respect and protect the public interest. The model had to ensure uniform practice privileges in all jurisdictions and value the CPA certificate. In addition, it had to enable a credible enforcement process.

Mr. Ueltzen stated that once the over-arching principles were established, the Committee looked at criteria that would be workable. The criteria included no notification, no fees, and no additional requirements for peer reviews, CPE or ethics. Additionally, the licensee must agree to submit to automatic jurisdiction when practicing in other states.

Mr. Ueltzen stated that the Committee considered four alternative approaches. One of the approaches considered was the state-based mobility system. The Committee also considered a national system with multi-state licensing. Another approach considered was a state compact similar to what had occurred in Oklahoma and Missouri. Finally, the Committee looked at a federally mandated uniform state-based mobility system.

Mr. Ueltzen stated that the Committee originally dismissed the state-based system that is similar to today's amended UAA proposal. He stated that the national system with multi-state licensing would have established a national organization that would license CPAs. The national system would set the standards for examination, CPE, and ethics, and provide for a form of national disciplinary action. Mr. Ueltzen stated that the Committee determined that the state compact approach was not workable because it was dependent upon 54 jurisdictions coming to agreement on a single compact.

Mr. Ueltzen stated that the Committee's recommendation was a federally mandated uniform state-based mobility system. He stated that it would have required Congress to establish a national standard for a CPA or firm that consisted of two elements. It required that the licensee be in good standing from any state and be subject to automatic jurisdiction in whatever state he or she practiced. It would not require registration, and the licensing, enforcement, and discipline would remain with each state. Essentially, wherever the law was violated, the CPA would be subject to that state's laws.

Mr. Ueltzen stated that since that time, NASBA and the AICPA have agreed to the new UAA proposal. The handout includes a copy of the AICPA Board resolution that was passed and approved prior to the agreement regarding the UAA proposal. The resolution endorsed the continued efforts on a state-by-state basis to implement the UAA language. Additionally, the resolution indicated that the AICPA would delay pursuing the Committee's recommendation until such time that it determines that the implementation of Section 23 cannot be implemented. The AICPA Committee would then move to evaluate the state-based mobility system at a national level. Mr. Ueltzen reiterated that the AICPA believed that the best solution is implementation of the UAA. However, if the UAA proposal is

unsuccessful, the Institute is prepared to move forward with federal legislation.

Mr. Ueltzen stated that a big issue for California is that the state does not require 150 hours of education for licensure. Thus, California is not a substantially equivalent state, and California CPAs continue to experience problems when entering into substantially equivalent states.

Mr. Swartz asked if any one else wished to provide comments.

Mr. Hal Schultz, representing the California Society of CPAs (CalCPA), stated that protecting the public is the foundation of success for a profession based on trust. Therefore, when CalCPA looked at this proposal, it looked at it from the perspective of protecting the public. CalCPA would not support regulation that would allow non-compliant CPAs from other states to have free access to California and ruin the reputation of the state's CPA profession.

Mr. Schultz stated that through its substantial equivalency provisions, the UAA proposal ensures that out-of-state CPAs allowed to practice in California have met the appropriate licensing standards. Through the registration requirements in order for firms to perform audits of companies headquartered in California, this proposal ensures that additional safeguards are applied to the critical audit function.

Mr. Schultz further stated that under this proposal, when the Board expends resources on matters related to out-of-state CPAs, it is for the purpose of enforcement, not for collecting and filing notifications. Mr. Schultz stated that Mr. Bishop had described his experience in Missouri. Virginia and Ohio have had no notification procedures in place and both states report few problems. In those few cases, the states have not had any difficulty in locating the offending CPAs and taking the necessary action.

Mr. Schultz stated that California has had a long tradition of temporary and incidental practice which it allowed out-of-state CPAs to practice in the state without any notification. During the process of developing the practice privilege program, there was no testimony that indicated that there had been any significant problems during that period of time.

Mr. Schultz concluded his comments by stating that CalCPA supported this proposal and encouraged the Board's favorable consideration and adoption.

Mr. Swartz asked if anyone else wished to provide comments, and

with no response, opened the floor for questions and comments. Mr. Swartz expressed concern regarding the level of consumer protection when states with no notification rules allow a CPA to enter that state to conduct an audit. Mr. Bishop stated that Missouri's current law requires that any attest function be issued through a firm registered in the state. Currently, Missouri's State Board and the Society are working on implementing a change to Missouri's law so that only audit would require full registration.

Mr. Driftmier stated that he believed that the review was the attest function.

Mr. Bishop further stated that NASBA did not alter the attest definition in any way and that the proposal specifically addresses requirements for conducting a review. He explained that under this proposal, if a CPA were conducting a review in a visited state, he or she would have to be qualified and legally able to perform the review in the home state. Additionally, the CPA would be required to follow the laws of the visited state. The proposal does not require a firm's registration, but the state's jurisdictional authority and their legal authority to that in another state are the same. Similarly, many times states link functions. For example, peer review is linked to attest functions. If an out-of-state CPA entered California from a state that did not have a peer review requirement in order to perform the review function, and California's law required peer review, the out-of-state CPA would need to comply with California's law and be enrolled in a peer review program.

Mr. Driftmier stated his firm prepares multi-state tax returns and that the UAA proposal does not address tax work in the UAA provisions. Mr. Driftmier inquired as to whether tax work would fall under the no notification rules.

Mr. Johnson stated that the amended UAA provisions state that a CPA must be qualified in his home state to perform those services even though he would not be required to register or provide notice in another state. Mr. Bishop stated that if a function is not specifically addressed in the amended UAA provisions, the interpretation is that if an out-of-state CPA enters another state to do tax work only, there would be no notification, no fee, no registration. The proposal states that a CPA entering a state for any engagement would need to comply with the laws of that state, would need to be legally able to perform that function in the home state, and would need to agree to be under that state's jurisdiction. The act of the CPA preparing a California tax return puts him under the jurisdiction of the California Board.

Ms. Chi stated that it was mentioned that there are over 15 states

considering the adoption of the UAA provisions. Ms. Chi asked if there was a projected timeframe for all states to have adopted the new provisions. Mr. Johnson stated that seven states would adopt the provisions this year and that seventeen states will have the provision ready for implementation in 2008. He further stated that in approximately two to three years, the majority of states would have adopted the provisions. Mr. Costello stated that it is important that the larger states such as California, New York, and Texas take the lead.

Ms. Chi stated that she was concerned that it would be costly for the California Board to locate a CPA with no notification rules.

Mr. Ueltzen stated that a client would know the name of the CPA because the CPA signs the tax return or audit. An address would be listed on the tax return or audit. Mr. Johnson stated that with regard to discipline, the CPA agrees that his home state Board will serve as agent for notice. He added that the visited state also has the right to pursue that individual in order to levee fines or to revoke the CPA's privilege to practice in that state.

Mr. Davila asked whether California would be able to revoke or suspend a visiting CPA's license in his home state. Mr. Davila stated that he believed that California would have to be able to affect a CPA's license in their home state. Mr. Johnson stated that the initial revocation would be their practice privilege in the State of California. The CPA's home state board would be obligated to take similar action. If a Maryland CPA has his practice privileges revoked in another state, it is automatic that Maryland would also revoke his license. However, not all states follow this practice. It is important that uniformity is established on a national basis. Mr. Costello stated that the requirement is written into the UAA provisions as "no escape."

Mr. Davila stated that one of his concerns is that states with fewer resources will not have the ability take disciplinary action. He stated that another concern relates to a CPA soliciting new business in the visited state. Mr. Bishop stated that one of the easiest cases for a state to act on is when another regulatory body has taken a disciplinary action first. Most states have laws that allow them disciplinary authority over a CPA that has been disciplined in another state. Mr. Bishop stated that soliciting new business in the visited state is not prohibited in the new UAA provisions. Mr. Swartz stated that the question comes from California's law which states that when a CPA is in California on a temporary basis, he cannot market his services to others or claim to be a California CPA. Mr. Johnson stated that the UAA provisions do not speak specifically about this issue.

Mr. Davila expressed concern regarding peer review. Mr. Johnson stated that if a firm performs an attestation engagement, audit, or

examination perspective for mutual information, or PCAOB audits and is not licensed in California, that firm must register in California. If California requires peer review, the firm must comply with those requirements even if they are different from their home state.

Mr. Blanc thanked the panel for its presentation. He indicated California has already enacted the provision that gives the Board jurisdiction over any act that is the practice of public accounting in the state of California. Mr. Blanc stated that it was his understanding that if this firm has a home office in California, then the firm must go through the registration process.

Mr. Blanc then requested a definition of "home office". Mr. Johnson stated that the home office is defined as corporate headquarters. Mr. Blanc stated that there could be multiple home offices. Mr. Bishop stated that whether or not a company has different home offices, when their audit is issued, the audit is issued to the home office. The firm must be registered in the state where the client has its home office to issue the audit. Mr. Iino indicated he believed the term "home office" needed clarification. He noted that it was especially unclear with regard to international companies.

Mr. Blanc asked if an out-of-state CPA or firm could engage in the marketing of tax shelters in California. Mr. Costello replied that an out-of-state CPA or firm could not engage in the marketing of tax shelters if it was prohibited under current California law.

Mr. Blanc expressed concern that California would not know if an out-of-state CPA or firm were not complying with California law such as CPE or the ethics examination. Mr. Ueltzen stated that a California consumer would report to the California Board that a CPA or firm was in violation of not complying with California laws.

Mr. Blanc inquired as to how the Board would monitor out-of-state CPAs regarding their compliance with California's CPE. Mr. Ueltzen states that the CPA is only required to comply with the home state's CPE requirements.

Mr. Swartz asked if a California CPA with only 120 hours could practice in another state. Mr. Bishop stated that the CPA that had 120 hours may not be individually substantially equivalent. However, if California's current law had the 150 hour requirement and the state adopted the UAA provisions, then the CPA with 120 hours would be recognized in any state because California would be a substantially equivalent state.

Dr. Charney expressed support for a national license for CPAs. Mr. Costello stated that NASBA does not support a federal mandate

and believes states can come together to solve the problem. Ms. Hariton expressed support for building in educational requirements that would enable a licensee to be knowledgeable regarding another state's public accounting laws.

Mr. Blanc suggested that NASBA develop a uniform form that could be completed on the Internet by CPAs requesting approval to engage in cross-border practice in a specific state. He further stated that NASBA could gather, compile, and edit the various state requirements for a notification form that would be available online. Further, NASBA would collect an appropriate fee to sustain its efforts. Mr. Johnson stated that he respected Mr. Blanc's recommendation but that he believed it did not accomplish the objective. Mr. Johnson reiterated that he believed that mobility would be adopted within the next three years.

Ms. Flowers stated that she is the only NASBA Board member who is not a CPA. She indicated that during Board meetings, mobility is a high priority. She added that she believed that whether or not California had notification, the Board would continue to be notified that a CPA requires disciplinary action only after a client has filed a complaint. She encouraged the Board to consider mobility.

Mr. Swartz stated that he believed that the only real franchise that CPAs have is the audit and believed that this proposal puts everybody on the same playing field. He added that there would be further discussion on this topic the next day.

2. Discussion Related to Cross-Border Issues.

Mr. Swartz indicated that the session was open for questions or comments.

Ms. Julie D'Angelo-Fellmeth with the Center for Public Interest Law (CPIL) at the University of San Diego School (USD) of Law stated that for the benefit of the new members, CPIL is a nonprofit, nonpartisan academic and advocacy program affiliated with the USD School of Law. CPIL has a long and active history of advocacy in the public interest before this Board and 25 other boards and before the Legislature related to occupational licensing agencies.

Ms. Fellmeth stated that she wanted to make a few comments on the mobility issue and on the revised exposure draft issued by NASBA. She stated that she had a different perspective than the NASBA and AICPA presenters and did not want Board members to be left with the notion that the no-notice provision is universally supported.

Ms. Fellmeth stated that there is public protection in the

exposure draft. However, as Mr. Blanc previously stated, public protection is primarily in the automatic "consent to jurisdiction" provisions, and these provisions were enacted last year in California.

Ms. Fellmeth stated that she respectfully opposed the "no-notice" and the "no-fee" provisions. One year ago, when this Board decided to support a bill that allowed any CPA from any state to provide "tax services" to Californians with no California license, no California practice privilege, and no California firm registration, she had stated then that the Board might as well abolish its entire licensing program.

Ms. Fellmeth stated that the purpose of licensing and the purpose of the notice requirement in the practice privilege laws is to enable the Board to ascertain that an out-of-state CPA is competent and honest before he or she offers services so as to prevent harm to the public. That is a basic and fundamental right of states, and it is one way in which states protect their citizens.

Ms. Fellmeth further stated that she was not surprised that no two states have enacted the UAA in the same way. California may well agree to allow out-of-state CPAs who are duly licensed by another state to practice without a California license. However, California should be entitled to notice so it can ensure that a CPA is duly licensed by another state and does not have any disqualifying conditions such as criminal convictions, indictments, or prior disciplinary action.

Ms. Fellmeth believed that for the same reason that the Legislature rejected the tax services provision last year, it is likely to reject a "no notice" provision this year or next year. She believed that the no-notice provision decreases public protection because it deprives the Board of the ability to stop unqualified and dishonest CPAs from practicing in California.

Ms. Fellmeth stated that the very small size of the Board's enforcement staff had been discussed many times before. It is clear that the Board does not have sufficient staff to police its own licensees, much less all the CPAs from other states who would be allowed to practice here without any pre-scrutiny by this Board. She questioned who would pay for the increased number of investigations and enforcement proceedings that would be necessary if California opens its borders.

Ms. Fellmeth stated that she did not disagree with the concepts that Mr. Costello had advanced, i.e., freeing up staff who are processing paperwork for redirection to the Enforcement Program. However, there is a fundamental difference between front-end licensing and back-end enforcement. The Board has a responsibility

to do both, and the Board cannot effectively do front-end public protection and prevention without notice.

Ms. Fellmeth noted that the NASBA and AICPA representatives spoke to the confusion of the “myriad” of state notification requirements. Ms. Fellmeth stated that she believed it is part and parcel of being a professional. Prevention of irreparable harm to consumers is a reason for the regulation of doctors, lawyers, and CPAs. This no-notice provision loses sight of that reason.

Ms. Fellmeth further stated that the NASBA and AICPA representatives indicated that the out-of-state CPA would be fully governed by California laws. When questioned, they clarified that it would not apply to California’s continuing education laws, ethics course laws, or reportable events laws. Ms. Fellmeth asked how an out-of-state CPA would know what California laws he or she is subject to and how would the Board know when those laws are violated. She further questioned the ability of the Board to revoke an out-of-state CPA’s license and the ability of the Attorney General’s Office and Administrative Law Judges to revoke something that does not exist.

Ms. Fellmeth stated that although the exposure draft indicates that substantial equivalency is the backbone of revised Section 23, she believed that the UAA had been amended to grandfather into “substantial equivalency” all CPAs from all states regardless of whether the state’s licensing requirements are substantially equivalent until about 2012. Ms. Fellmeth further stated that she believed the document would not prevent a state from substantially lowering its licensing standards.

Ms. Fellmeth indicated that the NASBA and AICPA presenters spoke about “no escape,” but she noted that she did not see anything in the document that requires the home state to discipline the license if a licensee violates the law in a visited state.

Ms. Fellmeth concluded that there are a lot of problems with this proposal. It proposes to replace up-front licensing, or at least notice, with back-end enforcement but with no increased enforcement resources and the potential dilution of the Board’s existing enforcement resources because the Board will need to spend more time on enforcement of out-of-state licensees. Ms. Fellmeth stated that this is not public protection and she urged the Board to think carefully as it moves forward.

Mr. Hal Schultz, representing the California Society of CPAs (CalCPA), stated that protecting the public is the foundation of

success for a profession based on trust. Mr. Schultz reported that CalCPA looked at this proposal from a public protection perspective, and CalCPA would not support regulation that would allow bad actors from other states to damage the reputation of the CPA profession in California. He stated that through its substantial equivalency provisions, this proposal provides that out-of-state CPAs allowed to practice in California have met appropriate licensing standards. Through the registration requirement for firms performing audits of companies headquartered in California, the proposal applies additional safeguards to audit quality.

Mr. Driftmier requested that Ms. Fellmeth explain her interpretation of the difference between the “no notification” proposal and California’s current practice privilege program. Ms. Fellmeth stated that in the ideal world, Board staff would scrutinize practice privilege applications before out-of-state CPAs conducted work in California. She added this is not currently occurring because of a lack of staff resources. She indicated that she believed that the lack of staff resources should not drive this policy issue.

Dr. Charney requested that Ms. Fellmeth provide her interpretation of the “no-escape” provision in the Section 23 Exposure Draft. Ms. Fellmeth expressed her concern regarding the phrase “trusting others to investigate and enforce complaints” that is on page 31 of the Amended Exposure Draft dated March 2007. She indicated that some states have expressed a concern that the home states will not discipline its licensees for acts that occur in the visited states and that other states will have insufficient enforcement resources. Further, Section 10.A.2. provides that state boards can discipline their licensees based on revocation or suspension of a practice privilege by another state. Ms. Fellmeth added that the previous day’s testimony indicated that the home state is required to take disciplinary action in the home state based on revocation or discipline of the practice privilege in a visited state. However, it is not a written requirement in the Section 23 language.

Mr. MacAloney inquired regarding the 150-hour educational requirement. Mr. Swartz stated that California has two tracks to licensure. He further indicated that he believed most California CPAs had 150 hours of education. Ms. Fellmeth stated that she disagreed that the majority of licensees have 150 hours of education. She further explained that the amount of general accounting experience a candidate is required to have is based on the amount of his or her education. If a candidate has 150 hours of education, equivalent to a Master’s degree, only one year of general accounting experience is required for licensure. If a candidate has 120 hours of education, equivalent to a Bachelor’s degree, two years of general accounting experience is required in order to become a CPA. She indicated that

this was a policy decision that the California Legislature made in 2001 when it was not entirely confident that the 150-hour rule would contribute to more qualified CPAs or better pass rates on the CPA exam.

Dr. Charney stated that he believed there was an existing California statute that enabled an out-of-state CPA to serve a client that moved to California without notification. Ms. Fellmeth stated that Section 5054 allows an out-of-state CPA who does not obtain a practice privilege to prepare a tax return for a natural person who moved to California without notification.

Mr. Blanc stated that he wanted to mention the return of temporary and incidental practice. Ms. Fellmeth stated because of the perceived problems with California's practice privilege program, legislation passed last year reinstated a form of temporary and incidental practice. The legislation enables an out-of-state CPA to work in California temporarily incident to an engagement in their home state as long as the CPA does not hold himself out as a California CPA or solicit California clients.

Mr. Swartz thanked Ms. Fellmeth for her comments and asked the panel if there were any responses to those comments.

Mr. Costello stated that believed that notification does not enhance public protection if the notifications are not being scrutinized.

Mr. Costello stated that NASBA believed that the vast majority of states require that if there is a disciplinary action taken in another state, that the home state must also take disciplinary action against its CPA. Mr. Blanc suggested that it might be appropriate to make it mandatory in the revision of Section 23 to require that the home state take disciplinary action against its CPA if a referral is received from another state. Mr. Bishop stated that the Uniform Accountancy Act requires that when one state board refers disciplinary action to a home state, the home state shall conduct an investigation. He further stated that it does not mandate that if California revokes a license that Arizona is required to revoke, but it does mandate that Arizona launch an investigation. Mr. Swartz inquired as to why the language would not indicate "shall" in the Section referred to by Ms. Fellmeth. Mr. Bishop stated that Section 23 is an amendment to the to the total act of the UAA and is not the Section that would state that provision. He further indicated that the UAA language that requires a state to investigate when a referral is received from another state board would be provided to the California Board. Ms. Shari Bango, representing the AICPA, stated that the action is listed in general explanatory information, not the statutory provision referred to by Ms. Fellmeth.

Ms. Chi expressed concern regarding the outcome of the provision if it was not adopted by all states. Mr. Bishop stated that this was a legislative effort, and he would not want to guarantee what legislatures would do, but there had been strong movement toward the adoption of mobility. He further indicated that nine states had introduced legislative bills and six states had reached agreement between their societies and their state boards on language. Mr. Bishop pointed out that a lot of states that have not yet considered mobility have already adopted the disciplinary language of the UAA.

Ms. LaManna expressed concern that California may have a greater influx of non-California accountants practicing in the state. She inquired as to how California would cover the increased costs of enforcement if the out-of-state CPA was not required to register or pay a fee. Mr. Costello stated that he was not convinced that California would have a significant rush of people entering the state to practice under the "no-notification" rules that would lead to increased costs. Mr. Bishop stated that Missouri did not see an increase in the cost of investigations after its gradual transition from mobility with notification to no notification. Mr. Costello stated that if a state's costs rise, the CPA licensees would bear the increased fee, but the licensee would benefit from the ability to practice in other jurisdictions without having to file paperwork for notification. Mr. Ueltzen added that California also has a cost recovery program in place to cover the cost of investigations.

Mr. Swartz stated that he believed cross-border practice is a national issue because every state is different. It was his experience that most of the disciplinary action taken by this Board relates to California licensees. He indicated that if the proposal were enacted, there would not be a flood of incompetent CPAs coming to California.

Mr. Swartz observed that the process had been informative. He then indicated that the CPC and the Board would consider the cross-border practice issue at the May 2007 meetings.

C. Consent Agenda.

It was moved by Mr. Waldman, seconded by Dr. Charney, and unanimously carried to adopt the consent agenda. (See Attachment 12.)

D. Report on Exam Re-score and Re-reporting Issues Related to the Fourth Quarter 2006 (October-November 2006).


Ms. Sigmann reported that the Board of Examiner's (BOE) of the AICPA issued its final position on March 21, 2007. **(See Attachment 13.)** The

Memorandum

Board Agenda Item XIII.B.1-2
March 22-23, 2007

To : Board Members

Date: March 9, 2007
Telephone : (916) 561-1788
Facsimile : (916) 263-3674
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From : Aronna Wong 
Legislation/Regulations Coordinator

Subject : Cross-Border Practice – Report of the AICPA Special Committee on Mobility

Attached for your consideration is the "AICPA Special Committee on Mobility Final Report of Activities and Recommendations and AICPA Board Consideration of the Committee's Recommendations, January 2007."

This document is being provided in conjunction with the UAA Exposure Draft to assist the Board in its deliberations on cross-border practice issues at this meeting. It presents the AICPA's perspective on interstate mobility issues and expresses support for the revised UAA provisions that permit cross-border practice with no notification and no fees. In addition it endorses a federally mandated state-based mobility provision as the best alternative to a state-by-state approach.

Michael Ueltzen, a Member of the AICPA Special Committee on Mobility, will be available to present information regarding this document and to respond to your questions.

Attachment

AICPA Special Committee on Mobility

**Final Report of Activities and Recommendations
and**

**AICPA Board Consideration of the Committee's
Recommendations**

January 2007

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AICPA Special Committee on Mobility Final Report and Recommendations

Executive Summary

- One of the stated intentions of the Uniform Accountancy Act (the UAA) was to achieve uniformity and promote mobility through the concept of Substantial Equivalency (Section 23 of the UAA). However, the UAA is a model act, and no one state has adopted it in its entirety, and no two states have adopted Section 23 in the same way. In addition, to date only 34 of the 55 jurisdictions have adopted all three of the “E’s” (Examination, Experience and Education) which are required for Substantial Equivalency.
- The lack of uniformity has caused exactly what the UAA was intended to prevent – a confusing set of different standards and requirements in each state as to what constitutes interstate practice and how registration or notification of a practice privilege is to occur, and at what cost.
- In 2006 events in California and Illinois brought this inconsistency to national attention and to a crisis point; however, these rules and problems are not unique to any one state. In fact, there are practice privilege requirements for registration or notification in most states and jurisdictions and they all vary in differing degrees.
- This lack of uniformity, the complexities associated with compliance, the public interest of clients who need efficient ease of access to the best qualified CPA for their needs, and the difficulty and costs that CPAs and their firms are bearing, caused the AICPA to form the Special Committee on Mobility in April 2006 to consider the barriers to mobility and recommend solutions.
- The Special Committee on Mobility consisted of a diverse group of experienced leaders, with backgrounds in state regulatory matters, and perspectives from CPA firms of all sizes.
- The Committee considered the current UAA Section 23 language, the long history of mobility and cross-border practice, the regulatory environment, and the need to respect and protect the public interest. They considered the complex and global business environment, including the needs of publicly held companies and of small business. They agreed to six overarching principles as well as criteria that needed to be included in any solution to the mobility problem.
- After reviewing comprehensive legal analyses on the current status of state mobility requirements, dialoguing with impacted stakeholders, including representatives from the Accountants’ Coalition, NASBA’s Substantial Equivalency Task Force and members from differing sized

CPA firms, the Committee considered several different alternative solutions to the current mobility system. As part of this deliberative process, the Committee performed a pro/con analysis of each possible alternative.

- As a result of the Committee's review and analysis process, a unanimous decision was made to recommend a federally mandated state-based mobility provision.

In order for this provision to become effective, it would have to be enacted by the US Congress. If enacted as proposed by the Committee, a CPA would still have to have a license in good standing from the state of his/her principal place of business. However, under this proposed system, additional notification or licensing and registration requirements imposed by other states when a CPA entered the state to practice would be superseded. Firms would not have to be licensed or register unless so required by the state(s) in which they have a physical office. Both CPAs and CPA firms would consent to automatic jurisdiction in the state in which they afforded themselves of the practice privilege.

- In December 2006, The Board of Directors of the AICPA accepted the Committee's recommendation as a preferable alternative to the current situation. However, the Board also recognized the significant and renewed efforts recently underway by all stakeholders to encourage states to adopt a newly proposed mobility provision under UAA Section 23 that would not include notification. Accordingly, the Board has delayed the implementation of the Special Committee's recommendation until such time that the Board determines that the newly proposed Section 23 cannot be implemented in a uniform manner.

Background

Committee Formation and Charge

In April 2006, The Board of Directors of the American Institute of Certified Public Accountants (AICPA) created a volunteer committee, the Special Committee on Mobility, to identify unnecessary burdens and requirements that do not contribute to protecting the public interest and block CPAs from easily practicing across state lines. Scott Voynich, former chair of the AICPA Board of Directors, was appointed to chair the special committee.

This action followed a series of events, including the California Board of Accountancy's publication of revised rules that went so far as to require licensure of out-of-state CPAs and their firms who prepare California tax returns for their clients located outside of the state of California. In addition, the Illinois Board of Examiners took a similar action which would have greatly expanded the number

of CPAs who would be required to obtain an Illinois license that did not reside within the state of Illinois. These rules were complex, expensive and confusing, and came at a time when CPAs were at or nearing the commencement of income-tax filing season. Depending on the circumstances, these requirements could have prevented CPAs from providing any services for several months, if not the entire year. Taken to their logical conclusion, these rules if adopted in a similar manner by every state would have required every CPA preparing multi-state tax returns to obtain a license or registration in every state in which their clients filed tax returns.

As a result of well-articulated responses by the AICPA, various State Societies and other stakeholders, these two state regulatory requirements were either modified or deferred for further consideration.

This sequence of events served to create heightened awareness of the potential extra-territorial provisions of other current state licensing requirements and a related lack of understanding and compliance with those requirements. The implications extended beyond tax return preparation; in fact, depending upon the state, these requirements had an impact on every possible service performed by CPA firms. Many CPA's are not aware of the myriad of differing requirements, and for those who are, they find the requirements to be confusing and inconsistent.

The AICPA Board believed that this was a high-priority initiative and it expected the Special Committee would provide significant resources to states seeking to enact or to revise mobility provisions within their state accountancy laws or regulations to provide for uniformity and consistency of a mobility system as envisioned under the Uniform Accountancy Act (UAA). In addition, the Special Committee was also asked to consider the viability of the current 'substantial equivalency' model and, if necessary, work to develop modifications to improve mobility. The goal was a system that provides both ease of mobility for CPAs while at the same time giving regulators the appropriate and necessary tools to protect the public. The AICPA has a long history of supporting a state-based regulatory system, and is dedicated to implementing a system to eliminate the artificial barriers to interstate practice, while at the same time ensuring that the public is adequately protected.

Under the "substantial equivalency" concept, which was developed by the AICPA and the National Association of State Boards of Accountancy (NASBA) as part of the UAA, CPAs with a valid license from a state with CPA licensing criteria that are "substantially equivalent" to those outlined in the UAA, or who individually meet those criteria, can practice in another state without obtaining a license from that state. However, "substantial equivalency" is not working as effectively as was envisioned because many of the 34 states that have enacted it have modified the provisions to fit their states' own unique policies, diluting the impact of the uniformity of the UAA provision.

With the current system as adopted by state licensing agencies across the country, CPAs and CPA firms now have to comply with a multitude of different requirements from state to state.

This issue has been further framed by today's dynamic business marketplace which has erased geographic boundaries and dictates that CPAs, in order to serve their clients and meet their business needs, be able to practice without unwarranted difficulty across state lines. To date, the current model for gaining practice privileges, known as 'substantial equivalency,' has not changed the process sufficiently to allow CPAs to serve their clients effectively and efficiently without unnecessary mobility burdens.

Committee Composition

The members of the Special Committee represented AICPA leadership including past chairs and board members, chairs of executive committees, and experienced members of the UAA Committee. The members held several decades of collective experience in state regulatory matters. State Society past presidents and government affairs leadership were also included. In addition, several of the members had current or previous experience serving on their state board of accountancy. The Committee was professionally staffed with AICPA senior management who brought perspective and expertise regarding state regulatory matters as well as national legislative issues.

Additionally, the members included representation from CPA firms of varying sizes, ranging from the largest of firms to a sole practitioner, as well as a member in industry and a State Society Executive Director. Their firms' practices encompassed all facets of the CPA profession, including audit, tax, consulting, litigation support, valuation, financial planning and assurance services.

Uniform Accountancy Act and Section 23

The preface to the Uniform Accountancy Act, Fourth Edition states, in part:

"Differing requirements for CPA certification, reciprocity, temporary practice, and other aspects of state accountancy legislation in the 55 American licensing jurisdictions (the 50 states, Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands) constitute artificial barriers to the interstate practice and mobility of certified public accountants. The Uniform Act seeks to eliminate such differences and the barriers

that they pose to effective practice of CPAs under modern conditions through the standard of "substantial equivalency" that was added to the Act in 1998.

Many of the organizations requiring the professional services of certified public accountants transact business on an interstate, and even on an international, basis; as a result, the practice of CPAs typically extends across state lines and, often international boundaries as well. Thus, there is compelling need for the enactment of uniform state accountancy laws that foster rather than inhibit interstate professional practice and for laws that provide appropriately for international practice.

This Uniform Act is provided as a single comprehensive piece of legislation that could be adopted in place of existing state laws. Because there is an accountancy law now in effect in every jurisdiction, however, the Uniform Act is also designed to the extent possible with separable provisions, so that particular parts of this Act could, with appropriate amendments, be added to existing laws instead of replacing such laws entirely. In the interest of uniformity and to promote mobility through the substantial equivalency standard, the AICPA and NASBA strongly urge states to adopt the entire Act."

The Uniform Accountancy Act (UAA) is a model act, published jointly by the AICPA and NASBA. Whereas each state has enacted some changes to align with the sections promulgated in the UAA, no one state has enacted the entire Act. Moreover, no two states have enacted or implemented it in exactly the same way. This is especially important with substantial equivalency, where in order for the concept of a uniform mobility system to work, each state must enact and implement the provision in exactly the same way.

The provision of substantial equivalency is contained in Section 23 of the UAA. Section 23 provides that as long as an individual has a valid certificate or license as a CPA in the state of his/her principal place of business and either:

- That state is substantially equivalent, or
- If the individual has personally met the requirements of substantial equivalency

then that individual shall have all of the privileges of certificate holders and licensees of states other than that of their principal place of business.

The criteria for substantial equivalency are commonly described as the "Three E's" – that is, that the state requires the Uniform CPA Examination, that the licensee have at least one-year Experience requirement and that the state mandate the 150-hour Education requirement. These requirements are defined elsewhere in the UAA.

Section 23 also includes the requirement that any individual who exercises the privilege, consent as a condition of the grant of this privilege, to the personal and subject matter jurisdiction and disciplinary authority of the other state's Board of Accountancy, and agrees to comply with that State's Act and Board rules and to

the appointment of that State Board as agent for process in any action or proceeding.

Additionally, the current version of Section 23 also includes the following language:

"However, such individuals *shall notify* the Board of their intent to enter the state under this provision."

In 1997 (the time at which the Section 23 concept was added to the UAA), the drafters seriously considered omitting any formal notification requirement, preferring a "driver's license" concept instead. However, ultimately, the drafters agreed to provide for "simple notification of intent to enter". It is this notification provision, as it has been embodied in statute, rule and/or policy, which is at the heart of the problems with, and the barriers to, achieving the uniform mobility that was envisioned in the joint creation of the UAA and described in the preface of the UAA Section 23 provision.

[Note: As of this writing, a proposed revision for exposure to Section 23 was authorized for exposure by the Boards of Directors of the AICPA and of NASBA, and was released for public comment until May 15, 2007. This revision proposes to eliminate the "notification" requirement in Section 23 of the UAA. If these revisions are ultimately approved by the AICPA and NASBA and embedded into the UAA, it will not have the force of law until and unless each state individually considers, and enacts, these changes into statutes, rules and/or policies. The Exposure Draft also removes the concepts of firm substantial equivalency and master notices for firms, but it does not expressly eliminate the concept of firm registration.]

Mobility and the Identified Barriers to Achieving a Uniform System

The Committee began its work considering the global concept of mobility and the barriers that have been created because of inconsistent enactment and implementation of UAA Section 23. Those barriers included items such as:

- Inconsistent application of when notification is required from state to state
- Requiring applicants for substantial equivalency to also obtain a firm permit when certain services such as attest are performed;
- Requiring licensees to give notice prior to commencing or even considering practice in another state;
- Not providing licensees with adequate information such as posting proper forms on their website for licensees to file prior to entering a state.

The Committee determined that the “notification” requirement was at the core of these barriers; while at the same time did little to nothing to protect the public. Therefore, the Committee concluded that eliminating the notification requirement was an important aspect of a uniform mobility system.

Four states – Ohio, Virginia, Missouri and mostly recently Wisconsin – have already moved to a mobility system without notification and have proved that the concept can work without any documented harm to the public.

The Committee was firm in its resolve that whatever solution was ultimately developed, it would have to be a true solution for the individual CPA as well as for his/her firm.

The Committee also agreed that an analysis would have to be performed on any potential solution to assure that mobility could be achieved without any unnecessary additional requirements and or unintended consequences that did not contribute to a uniform system or protect the public’s interest.

Overarching Principles and Criteria Established by the Committee

After discussion and consideration of the barriers to the current mobility system and in alignment with the Committee’s charge, the group agreed that any solution to mobility must be based on the following overarching principles:

- Respect and protect the public interest
- Ensure uniform practice privileges in all jurisdictions
- Maintain the credibility and value of the CPA certificate
- Enable a credible enforcement process
- Be administratively efficient
- Provide the ability to be responsive to the changing business environment

In addition to these principles, which guided the Committee’s work in considering alternative approaches, the Committee also agreed to four basic criteria that should be included in any mobility system:

1. No notification
2. No fees
3. No additional requirements (e.g.; firm licensure, peer review, CPE, ethics requirements)
4. Licensee submits to automatic jurisdiction of the state that he/she is seeking practice privileges

Consideration of How Lack of Mobility Impacts:

The Profession

The Committee discussed the impact on the profession that has resulted because of the current mobility system. Consideration was given by members relative to their own firms, as well as that of their peers by firm size.

- The smaller firms find compliance to be burdensome and time-consuming, and they do not have the resources to assure themselves that they are in compliance with each state's different respective requirements. These firms also have more difficulty with the out-of-pocket and administrative costs – they must either pass these costs on to their clients, which may not be feasible, or their only other alternative is to absorb the costs in their firm overhead. In addition, because many states require licensing or registration before even making a proposal to a prospective client, small firms find these requirements to be a barrier to entry and/or accepting an engagement.
- The larger firms have clients with especially diverse and complex corporate structures. As a result, the larger firms have had to create departments of personnel devoted exclusively to compliance with state rules and registrations. Even something as routine as a time-sheet has become laden with information about the states which may have been involved and each hour spent by each person that worked on the engagement. With all of that in place, and the related overhead, these firms still find it difficult to assure themselves that every person on an engagement is properly licensed or registered on a timely basis in order to serve clients with complex business and financial affairs. This is especially difficult when a firm is serving a client which does business in many or possibly all 55 jurisdictions, yet the individual CPA may or may not interact with the operations in all of the entity's locations – or go “boots on the ground.”
- Firms of all sizes shared common concerns about overall inconsistencies in state regulations, rules and policies. The larger firms find that they are burdened with complying with these rules in nearly all states, each and every year – which is further complicated with rules for multiple offices. The smaller firms are subject to the dynamic activities of their clients, so that these firms are providing services related to one set of states in one year, but another set of states in another year – and they may not know of all of the subject states until they discover the information in the course of the engagement.

Business and the Capital Markets

In addition to the compliance concerns with the current mobility system, of greater importance and public interest is the overriding need to serve the needs of clients by giving them access to the best qualified CPA and/or CPA firm – regardless of geographic location. In today's dynamic business world of increased globalization, business does not limit services to geographic boundaries, and neither should the CPAs that serve them.

The Committee supported the concept that allowing a client to have ease of access to their trusted business advisor and to be able to select the CPA firm that was the best-suited to its particular need or niche was paramount to the public interest.

The Committee concluded that the current system is an impediment to robust competition from qualified service providers without also imposing an unreasonable burden on the CPA and their firm. Moreover, the Committee expressed a concern that the imposition of multiple notification and practice privilege requirements did not serve to enhance public protection for that client or for third parties. Instead, the Committee believed that the CPA's own principal-state-of-business licensing provisions combined with the CPA's automatic consent to jurisdiction by practicing outside of his/her state of licensure is what provides the public protection.

Outreach to Stakeholders and Other Licensed Professions

As part of its work, the Committee also reviewed an analysis on how other professions are regulated (e.g. architects, dentists, engineers, nurses) and how they gain practice privileges in other states.

The Committee also had an opportunity to hear from representatives of The Accountants' Coalition and of NASBA's Substantial Equivalency Task Force regarding mobility and their efforts to implement the current substantial equivalency provision.

Additionally, the Committee was assisted by research provided by an outside law firm, as well as input from the general counsel of the AICPA and staff from the AICPA Washington, DC office.

Consideration of Alternative Approaches

In considering the identified obstacles and barriers to the current mobility system, potential solutions to overcoming those barriers, as well as the previously agreed to overarching principles for a mobility system, the Committee considered various alternatives to achieving a uniform mobility system, including taking no additional action other than to continue to pursue uniformity under the current state based mobility system that exists in Section 23 of the UAA.

Alternatives that were discussed include:

- A National Licensing System
- A State Compact
- A Federally Mandated Uniform State Based System

Variations of these alternatives were further explored and tested through a series of pro-con analyses and additional research and considerations.

The Recommendation of the Special Committee

A Federally Mandated State-Based Mobility System

After careful consideration, and with further consultation of legal research, the Committee agreed that a federally mandated state-based mobility approach would best achieve uniformity, ease mobility for CPAs and give regulators the necessary tools to protect the public.

The Committee believed that this approach represented the best alternative to the existing mobility model because it primarily worked within the framework of the existing state regulatory system, by preserving licensing, discipline and enforcement at the state level and with state boards of accountancy.

Specifically, the Committee's recommended mobility system would provide for a federally mandated national mobility provision that would need to be authorized by Congress.

The provision would not require individual state notification,

- Provided that an individual has a license in good standing from any state, and
- The individual and the CPA firm automatically consents to the personal and subject matter jurisdiction and disciplinary authority of any state's Board of Accountancy for services provided, as well as agreeing to comply

with the State's Act and Board rules, and to the appointment of that State Board as agent for process in any action or proceeding.

Under those conditions:

- The CPA would only need a valid license from the state of his/her principal place of business, with no additional requirements for practice privilege outside of that state.
- There would be no restrictions on the use of the CPA title or scope of services.
- There would be no additional forms to complete or fees to pay in any other state.
- The provision would state that under the conditions above the CPA would be allowed to practice in a state other than his or her principal state of practice without further licensing or notification to the other state.
- The provision would state that no state shall impose a law or regulation requiring any firm registration or licensure, unless that firm has a physical office location in that state.

The Committee unanimously supported this recommendation and believes that it achieves the goal of mobility and all of the overarching principles agreed to by the Committee. The federally mandated state based approach is respectful of the disciplinary process of the respective State Boards of Accountancy and respects and protects the public interest. It creates a solution that is feasible and efficient for CPAs from firms of all sizes.

Because it was not charged with determining implementation strategies, the Committee finalized its recommendation and presented it to the AICPA Board at its December 2006 meeting.

RESPECTFULLY SUBMITTED,
The AICPA Special Committee on Mobility

Scott Voynich, Chair, Georgia
Rich Caturano, Massachusetts
Kathy Eddy, West Virginia
Bill Ezzell, District of Columbia
LaVern Gentry, Idaho
Tom Hood, Maryland

Jeff Hoops, New York
Ken Hughes, North Carolina
Allen Katz, Massachusetts
Olivia Kirtley, Kentucky
Bea Nahon, Washington
Mike Ueltzen, California

Addendum

AICPA Board Consideration of Committee's Recommendation

To complete its charge, the Committee's recommendation was presented to the AICPA Board of Directors at its December 2006 meeting.

During the presentation, the Board was reminded of the external activities regarding mobility that had occurred since the Committee began its work in April 2006, including:

- Agreement by AICPA and NASBA leadership to remove the notification requirement from UAA Section 23
- Renewed interest on behalf of state societies and state boards of accountancy to implement a uniform Section 23 provision

After a comprehensive presentation and robust discussion by the AICPA Board, the following resolution was adopted:

Board Resolution On the Recommendation of the Special Committee on Mobility *as adopted by the AICPA Board on 12/8/06*

BE IT RESOLVED that the AICPA Board of Directors, after careful consideration of the recommendation of the Special Committee on Mobility, which endorses a federally mandated uniform state based mobility provision, hereby resolves to continue pursuing a state-by-state approach to mobility through the proposed revised Uniform Accountancy Act's Section 23 substantial equivalency provision which does not include a notification requirement; and

BE IT FURTHER RESOLVED that the Board adopts the federally mandated uniform state based mobility provision as recommended by the Special Committee as the best alternative to a state-by-state approach; and

BE IT FURTHER RESOLVED that the Board delays the implementation of the Special Committee's recommendation until such time that the Board determines that Section 23 cannot be implemented in a uniform manner; and

BE IT FURTHER RESOLVED that the Board hereby authorizes an effort by the AICPA to communicate with and educate relevant parties concerning the disparities among the states and the difficulties associated with state requirements related to mobility for CPAs, including communicating on the impact on interstate commerce and the users of CPA services.

Memorandum

Board Agenda Item XIII.B.1-2
March 22-23, 2007

To : Board Members

Date: March 7, 2007
Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail: awong@cba.ca.gov

From : Aronna Wong 
Legislation/Regulations Coordinator

Subject : Cross-Border Practice – Amended Exposure Draft, Proposed Revisions to AICPA/NASBA Uniform Accountancy Act Sections 23, 7, and 14

Attached for your consideration is the Amended Exposure Draft of Proposed Revisions to the Uniform Accountancy Act (UAA) Sections 23, 7, and 14, dated March 2007. As the Introduction to the Exposure Draft explains, the document was originally issued on December 11, 2006, but has subsequently been revised and re-issued. The March 2007 revisions to the text of the UAA statutes are indicated in double-underline and double-strikethrough.

The UAA is a model accountancy act developed jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA). The UAA is given consideration by most state boards of accountancy, and many state boards have adopted some or most of its provisions. This Board has not adopted the language in the UAA, but has incorporated many of the concepts in the UAA into California law. (The entire UAA is available at www.AICPA.org or www.NASBA.org.)

Facilitating cross-border practice while continuing to protect consumers has been a key issue for the regulation of the accountancy profession in recent years. This Exposure Draft revises the UAA provisions related to cross-border practice. To assist the Board in better understanding the proposed revisions, David Costello, CEO of NASBA, Ken Bishop, Chair of the NASBA CPA Mobility Task Force, and Michael Ueltzen, a member of the AICPA Special Committee on Mobility are scheduled to present information regarding the Exposure Draft at the upcoming March 2007 Board meeting. Because of the importance of this presentation, several hours during the afternoon of March 22, 2007 have been set aside for it. This will allow time for questions by Board members and others in attendance. In addition, a discussion of cross-border practice issues is on the agenda for the following morning.

One reason this item is on the agenda at this meeting is to give the Board an opportunity to consider the Exposure Draft and make a determination regarding any comments it may wish to provide to NASBA and the AICPA. The comment deadline is May 15, 2007, so there is time for comments approved in concept at this meeting to be incorporated into a draft letter for consideration and action at the May 11, 2007 Board meeting.

A second purpose in considering the Exposure Draft is to give the Board the opportunity to determine which, if any, of the concepts contained in the Exposure Draft would be appropriate for amendment into the California Accountancy Act. If the Board makes a

policy determination regarding possible amendments to the California Accountancy Act, draft statutory language can be provided for consideration at an upcoming meeting. In evaluating the Exposure Draft, the Board may want to give consideration to the following questions:

- **Is notification necessary to protect consumers?** The Exposure Draft does not require notification for practice privilege. Current California practice privilege requirements include a notification requirement and a requirement that an individual whose license has been disciplined, who has a criminal conviction, or who is the subject of an investigation obtain Board approval before beginning practice under a California practice privilege. How important are such "front-end controls" for the protection of consumers?

With regard to "back end controls," California law does not tie disciplinary jurisdiction to notification. The Exposure Draft provisions and California law are similar in this respect. Further, recent legislation (AB 1868) amended the California Accountancy Act to clarify that the Board has jurisdiction over any act that is the practice of public accountancy in this state.

- **How should state board activities related to practice privilege be funded?** California laws and regulations provide for a \$100 fee for a California practice privilege with an authorization to sign attest reports and a \$50 fee for a practice privilege without an authorization to sign attest reports. The Exposure Draft provides for a streamlined, no-fee program. Without a fee, in-state licensees would bear the cost of any practice privilege related activities.
- **Is "substantial equivalency" necessary for cross-border practice?** Both California law and the UAA provide for practice privilege based on "substantial equivalency" which is tied to the "three Es" of education, examination, and experience. California law also provides for practice privilege for CPAs who have practiced for four of the last ten years. While the intent of the California law has been to facilitate cross-border practice, instances have been identified where practitioners lawfully providing services in their home states have been unable to qualify for a California practice privilege. Since all CPAs must pass the same exam and practice under the same professional standards, it has been suggested that "substantial equivalency" may not be necessary to facilitate cross-border practice.
- **What is the best way to address firm practice?** California law provides for the registration of accountancy partnerships (including limited liability partnership) and accountancy corporations. Law changes enacted last year (AB 1868) permit an out-of-state firm to practice through a practice privilege holder without obtaining a California registration. These laws require that the practice privilege holder provide specific identifying information regarding the firm. The Exposure Draft requires registration based on the activities the practitioner is performing and whether the client has its "home office" in this state. Cross-border practice by an unregistered firm is permitted in many instances. The table on page 9 of the Exposure Draft provides an overview. Should a definition of "home office" be added to the UAA?

AMENDED EXPOSURE DRAFT

PROPOSED REVISIONS TO

AICPA/NASBA UNIFORM ACCOUNTANCY ACT

SECTIONS 23, 7 and 14

(Including Background and Commentary Related to Enhancing
Licensee Mobility While Protecting the Public)

March 2007

AICPA UAA Committee

William Strain, CPA – Chair
Thomas J. Baumgartner, CPA
Kevin E. Currier, CPA
Dennis M. Echelbarger, CPA
William F. Ezzell, Jr., CPA
Neal J. Harte, CPA
Grady Hazel, CPA
Richard E. Jones, CPA
Allen G. Katz, CPA
Stephen S. McConnel, CPA
Harold S. Shultz, CPA

NASBA UAA Committee

Andrew L. DuBoff, CPA – Chair
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J. Dwight Hadley, CPA
Thomas J. Mulligan, CPA
Robert A. Pearson, CPA
Laurie J. Tish, CPA
Michael D. Weatherwax, CPA
Michael Weinshel, CPA

Please submit comments by May 15, 2007 to:

Sheri Bango Cavaney – sbango@aicpa.org
and
Louise Dratler Haberman – lhberman@nasba.org

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Revisions to Uniform Accountancy Act

Sections 23, 7 and 14

INTRODUCTION

The revisions to Section 23 of the Uniform Accountancy Act (UAA) and conforming changes to Sections 7 and 14 provide a comprehensive system for permitting licensee mobility while making explicit the boards' authority to regulate all who offer or render professional services within their jurisdiction regardless of how those services are being provided. These changes achieve the goals of enhancing public protection, facilitating consumer choice and supporting the efficient operation of the capital markets.

The recommendations for changes to Section 23 are based on recognition by the American Institute of CPAs and the National Association of State Boards of Accountancy that the revisions will enhance the ability of CPAs to meet the needs of their clients and the capital markets while strengthening the ability of state boards of accountancy to regulate all who practice within their jurisdiction. Professionals are being asked daily to cross state lines, via travel or electronic communication, to serve the needs of clients who are not restricting their business to a single state and to provide expert technical resources to perform all levels of accounting services, including effective audits. However, state boards of accountancy continue to be responsible for protecting the people in their jurisdiction from those who incompetently practice public accountancy, irrespective of the state in which they have their principal place of business. Consequently, while a system of regulation that depends on multiple diverse notification procedures is difficult to justify in the name of public protection, a system that does not provide a mechanism for the board to act against those who harm its state's citizens is not meaningful.

EXPLANATION OF AMENDED REVISIONS TO SECTIONS 23, 7 AND 14 MARCH 2007

The December 11, 2006 Exposure Draft revisions to the UAA represented a bold step toward greater CPA mobility by proposing the grant of "no notice, no fee" practice privileges to qualified individuals. Still, it was argued by some that there remained UAA provisions which could affect mobility as a result of a broad interpretation of CPA firm registration requirements.

The AICPA and NASBA leadership concluded that mobility could be enhanced and the public protected if an out-of-state firm with no office in a state were required to obtain a

permit only if it were providing an audit, examination of prospective financial information, or a PCAOB engagement to a client having a home office in that state (A).

Under the proposed amendment to the December 11 exposure draft, an out-of-state firm without a permit could provide other attest and compilation services through individuals with practice privileges, but would, nevertheless, be subject to state board A's jurisdiction. The firm would have to meet the qualifications for state A's firm permit, including its ownership and peer review requirements if the firm provided other attest or compilation services for a client having its home office in state A. Individuals with practice privileges could provide services related to attest and compilation services for clients that do not have their home office in state A, could provide non-attest services in state A, and their firm could use the CPA title in the firm's name in state A, so long as their firm could do so in its home state (thus addressing the situation of firms from states that do not register sole proprietors as CPA firms).

HISTORY OF SUBSTANTIAL EQUIVALENCY

In May 1997 the AICPA/NASBA Joint Committee on Regulation of the Profession concluded a year-long study with the issuance of their report including suggestions for improving the state-based regulatory system. They cited a number of current environmental factors affecting the profession and its regulation which still apply: (1) globalization of business; (2) information and electronic technology; (3) expansion of services; (4) challenges to the current regulatory system; and (5) demographic shifts in the profession. Based on those suggestions, the Third Edition of the Uniform Accountancy Act was released. Its most significant change from prior versions was the concept of “substantial equivalency.”

Under the concept of substantial equivalency in the existing Section 23 of the UAA, if a CPA has a license in good standing from a state that utilizes CPA certification criteria that are essentially those outlined in the UAA (*i.e.* 150 hours of education, passing the Uniform CPA Examination and at least one year of experience), then the CPA would be qualified to practice in another state that is not the CPA’s principal place of business. The UAA drafters seriously considered omitting any formal notification requirement, but ultimately agreed to provide for a simple “notification of intent.” Should licensees change their principal place of business to another state, they would need to get a reciprocal license or, if a firm opens an office in another jurisdiction, it would need a license from that jurisdiction; however, gaining practice privileges was to only require notification to the accountancy board of one’s intent to enter their state.

In order for Section 23 to effectively impact mobility and the ability of CPAs to serve clients across state lines, as well as give state boards the ability to protect the public, each state needed to enact and implement the provision in a manner similar to what appeared in Section 23. Substantial equivalency remains the foundation of Section 23 in the proposed revision; however, the “notice” requirement has been eliminated in this proposal as an unnecessary and costly barrier to practice across state lines.

Unfortunately, the mobility and enhanced enforcement goals which are the foundation for the existing Section 23 have not been achieved. This is in large part due to practical difficulties, including the lack of uniformity in the notice requirement as implemented by the states. While the basic requirements for licensure are probably more uniform than ever (as of November 2006, there are 47 jurisdictions that have initial licensing criteria that are equivalent to the UAA’s), and while at least 31 jurisdictions have enacted some version of Section 23 to provide for a practice privilege, no two states have implemented it in exactly the same way. As states implemented differing versions of the provision, obstacles resulted that were often difficult for CPAs and CPA firms to navigate. One of the most significant obstacles that has been identified is how the notification requirements differ and vary from state to state.

WHY NOW?

Rather than the streamlined process envisioned, jurisdictions have set up different forms and requirements for notification. Some charge a fee and some do not; some calculate the fee per engagement, some by type of service and some on an annual basis; some have a short form and others a long form; some require no notice for their definition of “temporary or incidental practice” but do require notification for engagements that go beyond that, etc. [See Exhibit I – Why the Notice Requirement is Broken.] Professionals practicing beyond the state of their principal place of business find it difficult to comply with state laws and some states have questioned how practically they can discipline CPAs from other states. Some states have recognized the problems that their licensees are having in efficiently obtaining practice privileges in other states.

It has been almost ten years since the Joint Group highlighted the development of the global economy, and globalization has continued to move rapidly forward. Effective American participation in the global economy requires efficient access to the specialized expertise of CPAs across state lines with a minimum of cost, delay and paperwork. Time-consuming, complex and costly procedures for gaining such access cannot be considered as being in the public’s best interest. Compliance costs may be passed on to the public (businesses and consumers) in the form of higher costs for services.

These proposed changes provide the right balance of trust and protection. Removing notification is being coupled with automatic jurisdiction. By removing boundaries to practice within the United States, individuals and businesses will have easier access to appropriate expertise and there will be greater competition and lower future compliance costs to provide services. At the same time, the board’s ability to discipline under the proposal is based on the CPA’s and the CPA’s firm’s performance of public accounting activity, either physically, electronically or otherwise, within the state, rather than restricting the board’s authority to only those holding a state’s license or a practice privilege. This proposal gives the board expanded jurisdiction and authority over all CPAs practicing directly or indirectly in a state.

As has been frequently stated, problems arise with those who seek to avoid the board’s rules, rather than those who seek to comply. In simplifying procedures for cross-border practice, the boards would be recognizing that the vast majority of CPAs are law-abiding licensees who are trying to serve their clients’ business needs that seldom stop at the state line.

A few states have already moved forward with the elimination of notification and automatic consent to enforcement, such as Missouri, Ohio, Virginia and most recently Wisconsin, and they have proved that the concept can work. In fact, both Ohio and Virginia have an over five-year history with no notification requirement, without any documented lapse in public protection.

SUMMARY OF PROPOSED STATUTE REVISIONS

Below is a description of the revisions that are being proposed for both the December 2006 and the March 2007 amendments. Revisions that appeared in the December 2006 document appear in normal type, while amended revisions to the revised March 2007 document appear in **BOLD**.

1. Removal of the notification requirement within Section 23:

Consistent language is added to Section 23 (a) (1) and (2) for both state and individual substantial equivalency: "Notwithstanding any other provision of law, an individual who offers or renders professional services...shall be granted practice privileges in this state and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in 23(a) (3)."

2. Addition of explicit language that gives a Board of Accountancy automatic jurisdiction over a CPA and the CPA firm employing them:

Subsection 23(a) (3) is intended to allow state boards to discipline licensees from other states that practice in their state under a substantial equivalency practice privilege. New language is added to clarify that if an individual licensee is using these practice privileges to render professional services in the state on behalf of a CPA firm, then automatic jurisdiction of the state board is also asserted over the firm.

3. In addition, a new provision is added to 23 (a) (3)(c) that enhances state board authority over unauthorized practice by requiring a licensee to cease performing services in the substantial equivalency practice privilege state if the license from his or her principal place of business is no longer valid.

4. Deletion of Sections 7(i) and 7 (j) – firm substantial equivalency:

As a result of the elimination of any notification requirement under Section 23, former subsections 7(i) and 7(j) are also being deleted. These provisions provided for substantial equivalency on a firm wide basis. These provisions were added to the 4th Edition, released in 2005, but would no longer be necessary with the elimination of notification.

5. Section 23(a)(3):

Deletes “CPA” in front of the word “firm” in two places because “CPA firm” is defined in Section 3(g) as a firm holding a permit in this state.

6. Sections 23(a)(4) and 7(a):

The combined objective of these new subsections is to clarify under what circumstances a firm would need to obtain a firm permit when an individual (or individuals) within the firm was operating in the state under a substantial equivalency practice privilege. The effects of these revisions are described further in the attached table.

7. Section 7(c)(1):

Out-of-state individuals with practice privileges would not be required to be licensed in this state.

8. Section 7(c)(2):

An individual with practice privileges could be designated by an out-of-state CPA firm as responsible for the firm’s registration compliance.

9. Section 7(c)(3) & (4):

Practice privileged individuals could supervise, or sign, or authorize the signature of accountant reports on behalf of a firm if they meet the competency requirements prescribed in the applicable professional standards.

10. Section 14(a), (b) & (c):

Practice privileged individuals could provide attest services and use the CPA title without being licensed in another state, but must provide the services pursuant to applicable professional standards.

11. Section 14(p):

A conforming provision is being added to Section 14 which provides that as long as an out-of-state firm complies with the relevant requirements of new Section 7(a)(2) or 7(a)(3), it could do so through practice privileged individuals without a CPA firm permit from this state.

When a Firm Permit is Not Required

What an individual with practice privileges can do as an employee of a firm from another state but without a firm permit in this state:
Perform a SSARS review or compilation for a client that has its home office in this state.*
Perform a financial statement audit or other engagement or other SAS services in this state for a client that does NOT have its home office in this state.*
Perform an examination of prospective financial information to be performed in accordance with SSAE for a client that does NOT have its home office in this state.**
Perform an engagement to be performed in accordance with PCAOB standards for a client that does NOT have its home office in this state**
Perform a SSARS review for a client that does NOT have its home office in this state.**
Offer or render any other professional service as a firm while using the title "CPA" or "CPA firm" in this state.**

* So long as the out-of-state firm meets the Section 7 ownership and peer review requirements.

** So long as the out-of-state firm could lawfully do so in its home state.

When a Firm Permit is Required

What the same individual <i>cannot</i> do:	
Perform an audit or other engagement in accordance with SAS for any entity with its home office in this state.**	
Perform an examination of prospective financial information to be performed in accordance with SSAE for any entity with its home office in this state.**	
Perform an engagement to be performed in accordance with PCAOB standards for any entity with its home office in this state.**	

** However, the accountant's report may be supervised, or signed, or the signature authorized for the firm by a practice privileged individual.

TEXT OF PROPOSED STATUTE REVISIONS BY SECTION

Note: The material set out below is the proposed statutory text and commentary of the impacted UAA provisions. The text of the statutory provisions is in **BOLD** type. The proposed language to be added that appeared in the December 2006 exposure draft is underlined, and proposed deleted language is stricken-through. The March 2007 additions are double-underlined and deletions are double-stricken-through.

SECTION 23 SUBSTANTIAL EQUIVALENCY

- (a)(1) An individual whose principal place of business is not in this state and who holds having a valid ~~certificate or~~ license as a Certified Public Accountant from any state which the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of ~~certificate holders and~~ licensees of this state without the need to obtain a ~~certificate or permit~~ license under Sections 6 or 7. ~~However, such individuals shall notify the Board of their intent to enter the state under this provision. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this section shall be granted practice privileges in this state and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in 23(a) (3).~~
- (2) An individual whose principal place of business is not in this state and who holds having a valid ~~certificate or~~ license as a Certified Public Accountant from any state which the NASBA National Qualification Appraisal Service has not verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of ~~certificate holders and~~ licensees of this state without the need to obtain a ~~certificate or permit~~ license under Sections 6 or 7 if such individual obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act. ~~However, such individuals shall notify the Board of their intent to enter the state under this provision.~~ Any individual who passed the Uniform CPA Examination and holds a valid license issued by any other state prior to January 1, 2012 may be exempt

from the education requirement in Section 5(c)(2) for purposes of this Section 23 (a)(2). Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this section shall be granted practice privileges in this state and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in 23(a) (3).

(3) Any individual licensee of another state exercising the privilege afforded under this section and the ~~CPA~~ firm which employs that licensee hereby simultaneously consents, as a condition of the grant of this privilege:

(Aa) to the personal and subject matter jurisdiction and disciplinary authority of the Board;

(Bb) to comply with this Act and the Board's rules; and,

(Ce) that in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a ~~CPA~~ firm; and

(Ded) to the appointment of the State Board which issued their license as their agent upon whom process may be served in any action or proceeding by this Board against the licensee.

(4) An individual who has been granted practice privileges under this section who, for any entity with its home office in this state, performs any of the following services;

(A) any financial statement audit or other engagement to be performed in accordance with Statements on Auditing Standards;

(B) any examination of prospective financial information to be performed in accordance with Statements on Standards for Attestation Engagements; or

(C) any engagement to be performed in accordance with PCAOB standards;

May only do so through a firm which has obtained a permit issued under Section 7 of this Act.

(b) A licensee of this state offering or rendering services or using their CPA title

in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state. Notwithstanding Section 11(a), the Board shall be required to investigate any complaint made by the board of accountancy of another state.

COMMENT: Subsection 23(a)(3) is intended to allow state boards to discipline licensees from other states that practice in their state. If an individual licensee is using these practice privileges to offer or render professional services in this state on behalf of a CPA firm, Section 23(a)(3) also facilitates state board jurisdiction over the CPA firm as well as the individual licensee even if the firm is not required to obtain a permit in this state. Under Section 23(a), State Boards could utilize the NASBA National Qualification Appraisal Service for determining whether another state's certification criteria are "substantially equivalent" to the national standard outlined in the AICPA/NASBA Uniform Accountancy Act. If a state is determined to be "substantially equivalent," then individuals from that state would have ease of practice rights in other states. Individuals who personally meet the substantial equivalency standard may also apply to the National Qualification Appraisal Service if the state in which they are licensed is not substantially equivalent to the UAA.

Individual CPAs who practice across state lines or who service clients in another state via electronic technology would not be required to obtain a reciprocal certificate or license if their state of original certification is deemed substantially equivalent, or if they are individually deemed substantially equivalent. ~~Under Section 23, the CPA merely must notify the Board of the state in which the service is being performed.~~ However, licensure is required in the state where the CPA has their principal place of business. If a CPA relocates to another state and establishes their principal place of business in that state then they would be required to obtain a certificate in that state. See Section 6(c)(2). Likewise, if a firm opens an office in a state or if a firm performs any of the services described in Section 23(a)(4), they would be required to obtain a license in that state. As a result of the elimination of any notification requirement combined with the automatic jurisdiction over any firm that has employees utilizing practice privileges in the state, former subsections 7(i) and 7(j) have been deleted. See also Sections 7(i) and 7(j) which allow the use of substantial equivalency on a firm wide basis.

Unlike prior versions of this Section, the revised provision provides that practice privileges shall be granted and that there shall be no notification. With the addition of a stronger Consent requirement (subsection 23(a)(3)), there appears to be no need for individual notification. As it relates to the notification requirement, states should consider the need for such a requirement since (i) the nature of an enforcement complaint would in any event require the identification of the CPA, (ii) online licensee databases have greatly improved, and (iii) both the individual a CPA practicing on the basis of substantial equivalency as well as the individual's CPA firm employer will be subject to enforcement action in any state under Section 23 (a)(3) regardless of a notification

requirement. Implementation of the “substantial equivalency” standard and creation of the National Qualification Appraisal Service will make a significant improvement in the current regulatory system and assist in accomplishing the goal of portability of the CPA title and mobility of CPAs across state lines.

Section 23(a)(4) clarifies situations in which the individual could be required to provide services through a CPA firm holding a permit issued by the state in which the individual is using practice privileges.

Section 23(a)(4) in conjunction with companion revisions to Sections 7 and 14, still provide that an individual with practice privileges cannot do the following as an employee of a firm unless the firm holds a CPA firm permit from this state:

- perform an examination of prospective financial information in accordance with SSAE for any entity with its home office in this state
- perform an engagement in accordance with PCAOB standards for any entity with its home office in this state
- perform an audit or other engagement in accordance with SAS for any entity with its home office in this state

In order to be deemed substantially equivalent under Section 23(a)(1), a state must adopt the 150-hour education requirement established in Section 5(c)(2). A few states have not yet implemented the education provision. In order to allow a reasonable transition period, Section 23(a)(2) provides that an individual who has passed the Uniform CPA examination and holds an active license from a state that is not yet substantially equivalent may be individually exempt from the 150-hour education requirement and may be allowed to use practice privileges in this state if the individual was licensed prior to January 1, 2012.

SECTION 7

FIRM PERMITS TO PRACTICE, ATTEST AND COMPILATION COMPETENCY AND PEER REVIEW

~~(a) The Board shall grant or renew permits to practice as a CPA firm to entities that make application and demonstrate their qualifications therefor in accordance with the following subsections of this Section, or to CPA firms originally licensed in another state that establish an office in this state. A firm must hold a permit issued under this Section in order to provide attest services as defined or to use the title "CPAs" or "CPA firm"~~

(a) The Board shall grant or renew permits to practice as a CPA firm to applicants that demonstrate their qualifications therefor in accordance with this Section.

(1) The following must hold a permit issued under this Section:

(A) Any firm with an office in this state performing attest services as defined in Section 3(b) of this Act; or,

(B) Any firm with an office in this state that uses the title "CPA" or "CPA firm;" or,

(C) Any firm that does not have an office in this state but performs attest services described in Section 3(b)(1), (3) or (4) of this Act for a client having its home office in this state.

(2) A firm which does not have an office in this state may perform services described in subsections 3(b)(2) or 3(f) for a client having its home office in this state and may use the title "CPA" or "CPA firm" without a permit issued under this Section only if:

(A) it has the qualifications described in subsections 7(c) [ownership] and 7(h) [peer review], and

(B) it performs such services through an individual with practice privileges under Section 23 of the Act.

(3) A firm which is not subject to the requirements of 7(a)(1)(C) or 7(a)(2) may perform other professional services while using the title "CPA" or "CPA firm" in this state without a permit issued under this Section only if:

(A) it performs such services through an individual with practice privileges under Section 23 of the Act, and,

(B) it can lawfully do so in the state where said individuals with practice privileges have their principal place of business.

COMMENT: This Uniform Act departs from the pattern of some accountancy laws now in effect in eliminating any separate requirement for the registration of firms and of offices. The information-gathering and other functions accomplished by such registration should be equally easily accomplished as part of the process of issuing firm permits under this section. The difference is, again, one of form more than of substance but one that should be kept in mind if consideration is given to fitting the permit provisions of this Uniform Act into an existing law.

As pointed out in the comment following section 3(g), above, because a CPA firm is defined to include a sole proprietorship, the permits contemplated by this section would be required of sole practitioners as well as larger practice entities. To avoid unnecessary duplication of paperwork, a Board could, if it deemed appropriate, offer a joint application form for certificates and sole practitioner firm permits.

This provision also makes it clear that firms with an office in this state may not provide attest services as defined, or call themselves CPA firms without a license in this state. Certified Public Accountants are not required to offer services to the public, other than attest services, through a CPA firm. CPAs may offer non-attest services through any type of entity they choose and there are no requirements in terms of a certain percentage of CPA ownership for these types of entities as long as they do not call themselves a "CPA firm" or use the term "CPA" in association with the entity's name. These non-CPA firms are not required to be licensed by the State Board.

Out-of-state firms without an office in this state may provide attest services other than those described in Section 23(a)(4) for a client which has its home office in this state, and call themselves CPA firms in this state without having a permit from this state so long as they do so through a licensee or individual with practice privileges and so long as they are qualified to do so under the requirements of Section 7.

Depending on the services provided, and if the firm calls itself a CPA firm, such a firm is subject to the requirements described in revised subsection 7(a)(2)(A) or subsection 7(a)(3)(B), whichever is applicable.

- (b) **Permits shall be initially issued and renewed for periods of not more than three years but in any event expiring on [specified date] following issuance or renewal. Applications for permits shall be made in such form, and in the case of applications for renewal, between such dates as the Board may by rule specify, and the Board shall grant or deny any such application no later than _____ days after the application is filed in proper form. In any case where the applicant seeks the opportunity to show that issuance or renewal of a**

permit was mistakenly denied or where the Board is not able to determine whether it should be granted or denied, the Board may issue to the applicant a provisional permit, which shall expire ninety days after its issuance or when the Board determines whether or not to issue or renew the permit for which application was made, whichever shall first occur.

COMMENT: See the comment following section 6(b) regarding the renewal period.

(c) An applicant for initial issuance or renewal of a permit to practice under this Section shall be required to show that:

- (1) Notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state, and such partners, officers, shareholders, members or managers, whose principal place of business is in this state, and who perform professional services in this state hold a valid certificate issued under Section 6 of this Act or the corresponding provision of prior law or are public accountants registered under Section 8 of this Act. Although firms may include non-licensee owners the firm and its ownership must comply with rules promulgated by the Board. For firms of public accountants, at least a simple majority of the ownership of the firm, in terms of financial interests and voting rights, must belong to holders of registrations under Section 8 of this Act. An individual who has practice privileges under Section 23 who performs services for which a firm permit is required under Section 23(a)(4) shall not be required to obtain a certificate from this state pursuant to Section 6 of this Act.

COMMENT: The limitation of the requirement of certificates to partners, officers, shareholders, members and managers who have their principal place of business in the state is intended to allow some latitude for occasional visits and limited assignments within the state of firm personnel who are based elsewhere. If those out-of-state individuals do not have their principal places of business in this state and qualify for practice privileges under Section 23, they do not have to be licensed in this state. In addition, the requirement allows for non-licensee ownership of licensed firms.

(2) Any CPA or PA firm as defined in this Act may include non-licensee owners provided that:

- (A) The firm designates a licensee of this state, or in the case of a firm which must have a permit pursuant to Section 23(a)(4) a licensee of another state who meets the requirements set out in Section

23(a)(1) or in Section 23(a)(2), who is responsible for the proper registration of the firm and identifies that individual to the Board.

- (B) All non-licensee owners are active individual participants in the CPA or PA firm or affiliated entities.
- (C) The firm complies with such other requirements as the board may impose by rule.
- (3) Any individual licensee and any individual granted practice privileges under this Act who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm, shall meet the competency requirements set out in the professional standards for such services.
- (4) Any individual licensee and any individual granted practice privileges under this Act who signs or authorizes someone to sign the accountants' report on the financial statements on behalf of the firm shall meet the competency requirement of the prior subsection.

COMMENT: Because of the greater sensitivity of attest and compilation services, professional standards should set out an appropriate competency requirement for those who supervise them and sign attest or compilation reports. However, the accountant's report in such engagements may be supervised, or signed, or the signature authorized for the CPA firm by a practice privileged individual.

- (d) An applicant for initial issuance or renewal of a permit to practice under this Section shall be required to register each office of the firm within this State with the Board and to show that all attest and compilation services as defined herein rendered in this state are under the charge of a person holding a valid certificate issued under Section 6 of this Act or the corresponding provision of prior law or some other state.
- (e) The Board shall charge a fee for each application for initial issuance or renewal of a permit under this Section in an amount prescribed by the Board by rule.
- (f) An applicant for initial issuance or renewal of permits under this Section shall in their application list all states in which they have applied for or hold permits as CPA firms and list any past denial, revocation or suspension of a permit by any other state, and each holder of or applicant for a permit under this Section shall notify the Board in writing, within 30 days after its occurrence, of any change in the identities of partners, officers, shareholders,

members or managers whose principal place of business is in this State, any change in the number or location of offices within this State, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any other state.

- (g) Firms which fall out of compliance with the provisions of the section due to changes in firm ownership or personnel, after receiving or renewing a permit, shall take corrective action to bring the firm back into compliance as quickly as possible. The State Board may grant a reasonable period of time for a firm to take such corrective action. Failure to bring the firm back into compliance within a reasonable period as defined by the Board will result in the suspension or revocation of the firm permit.
- (h) The Board shall by rule require as a condition to renewal of permits under this Section, that applicants undergo, no more frequently than once every three years, peer reviews conducted in such manner as the Board shall specify, and such review shall include a verification that individuals in the firm who are responsible for supervising attest and compilation services and sign or authorize someone to sign the accountant's report on the financial statements on behalf of the firm meet the competency requirements set out in the professional standards for such services, provided that any such rule --
 - (1) shall be promulgated reasonably in advance of the time when it first becomes effective;
 - (2) shall include reasonable provision for compliance by an applicant showing that it has, within the preceding three years, undergone a peer review that is a satisfactory equivalent to peer review generally required pursuant to this subsection (h);
 - (3) shall require, with respect to any organization administering peer review programs contemplated by paragraph (2), that it be subject to evaluations by the Board or its designee, to periodically assess the effectiveness of the peer review program under its charge, and
 - (4) *may require that organizations administering peer review programs provide to the Board information as the Board designates by rule; and
 - (5) *shall require with respect to peer reviews contemplated by paragraph (2) that licensees timely remit such peer review documents as specified by Board Rule or upon Board request and that such documents be maintained by the Board in a manner consistent with Section 4(j) of this Act.

* Due to its 1988 commitment to its members, the AICPA cannot support this provision at this time.

COMMENT: The AICPA and NASBA both agree that periodic peer reviews are an important means of maintaining the general quality of professional practice.

In the interests of providing flexibility where appropriate or desirable, this provision would give the Board latitude when to require reviews. Paragraph (2) is intended to recognize that there are other valid reasons besides state regulation for which firms may undergo peer reviews (for example, as a condition to membership in the AICPA). It is also intended to avoid unnecessary duplication of such reviews, by providing for the acceptance of peer reviews performed by other groups or organizations whose work could be relied on by the Board. If a peer review requirement is established by the Board, paragraph (3) requires that the Board assure that there is an evaluation of the administration of the peer review program(s) which is accepted by the Board, which is performed either by the Board or its designee. Paragraph (4) would require the administering entities of peer review programs to provide the Board information, as required by rule. Paragraph (5) requires that licensees remit peer review documents to the Board, as specified by rule, and that these documents would be maintained subject to the confidentiality provision in Section 4(j) of the Act.

Paragraphs (4) and (5) primarily address the ability of the Board to have direct access to peer review results. Previous editions of the UAA contained language that could have been interpreted to either not permit or to limit state boards' access to results of the peer review process. Language that restricted the Board's ability to access the results of peer review was consistent with the AICPA's commitment to its membership to maintain the confidentiality of peer review materials that were generated through the AICPA peer review program. However, in response to regulatory concerns it was determined that new language was needed to provide for greater transparency. At its spring 2004 meeting, AICPA's governing Council approved a resolution in support of increased transparency in the peer review process. However, as a result of the AICPA's 1988 commitment to its membership to maintain the confidentiality of peer review results, the AICPA's Council will not act on its resolution without a vote of the AICPA's membership. The AICPA will not pursue a vote of its membership until the membership has fully considered the issues surrounding this matter. Until that time, a solution for the UAA was crafted that recognized the authority of state boards of accountancy to take action and at the same time allowed the Institute to keep its commitment to the AICPA membership on confidentiality of peer review materials. For that reason, paragraphs (4) and (5) are marked with an asterisk (*) that states "Due to its 1988 commitment to its members, the AICPA cannot support this provision at this time."

The term "peer review" is defined in section 3(n).

~~(i)(1) Any CPA firm with a permit in this state may perform services through its individuals licensed in another state whose principal places of business are not in this state and who meet the requirements in Section 23 of this Act. However, the CPA firm:~~

~~———(A) Shall provide name(s) of such individuals to the Board of Accountancy~~

~~upon request~~

~~(B) Shall, by utilizing the privileges granted under this provision, consent on its own behalf and for the individual licensees to:~~

~~(i) cooperate in any Board investigation regarding any of the individual licensees of the CPA firm even if the individual is no longer an owner or employed by the CPA firm;~~

~~(ii) accept service of process from the Board on its own behalf and for the licensees;~~

~~(iii) be subject to the administrative jurisdiction of the state board regarding enforcement matters arising out of or pertaining to the use of the practice privileges provided under this subsection; and~~

~~(iv) comply with the state's accountancy laws and rules while using practice privileges under this subsection.~~

~~(2) An individual licensee whose CPA firm has complied with the preceding subsection shall not be required to file the notice required under Section 23 of this Act only as long as said individual licensee remains an employee or owner of the CPA firm.~~

~~(j) A CPA firm with a permit in another state which does not have an office in this state may provide professional services in this state through individuals that meet the requirements set out in Section 23 and such individuals shall be exempt from the notice requirement set out in Section 23 if the CPA firm:~~

~~(1) has filed a master notice, which shall be renewed not more frequently than annually, to all participating substantially equivalent jurisdictions, including this Board, by giving notice to the NASBA Qualifications Appraisal Board (or other comparable service designated by the Board); provided the information as maintained by NASBA (or such other comparable service) is accessible to this Board and includes the address of the firm and the name of the individual licensee responsible for filing the master notice.~~

~~(2) maintains a system of records reasonably designed to record for each calendar year the name, certificate number, state of licensure and principal place of business of each individual licensee who has used practice privileges in this state pursuant to Section 23 of this Act.~~

~~(3) has affirmed in its master notice that it consents in its own behalf and for the individual licensees to the requirements set forth in Section 7(i)(1)(B).~~

SECTION 14 UNLAWFUL ACTS

- (a) **Only licensees and individuals who have practice privileges under Section 23 of this Act may issue a report on financial statements of any person, firm, organization, or governmental unit or offer to render or render any attest or compilation service, as defined herein. This restriction does not prohibit any act of a public official or public employee in the performance of that person's duties as such; or prohibit the performance by any non-licensuree of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. Non-licensurees may prepare financial statements and issue non-attest transmittals or information thereon which do not purport to be in compliance with the Statements on Standards for Accounting and Review Services (SSARS).**

COMMENT: This provision, giving application to the definition of report in section 3(r) above, is the cornerstone prohibition of the Uniform Act, reserving the performance of those professional services calling upon the highest degree of professional skill and having greatest consequence for persons using financial statements--namely, the audit function and other attest and compilation services as defined herein -- to licensees. It is so drafted as to make as clear and emphatic as possible the limited nature of this exclusively reserved function and the rights of unlicensed persons to perform all other functions. This wording addresses concerns that this exemption could otherwise, by negative implication, allow non-licensurees to prepare any report on a financial statement other than a SSARS - i.e., other attestation standards. Consistent with Section 23, individuals with practice privileges may render these reserved professional services to the same extent as licensees.

This provision is also intended to extend the reservation of the audit function to other services that also call for special skills and carry particular consequence for users of financial statements, albeit in each respect to a lesser degree than the audit function: namely, the performance of compilations and reviews of financial statements, in accordance with the AICPA's Statements on Standards for Accounting and Review Services, which set out the standards to be met in a compilation or review and specify the form of communication to management or report to be issued. The subsection is intended to prevent issuance by non-licensurees of reports or communication to management using that standard language or language deceptively similar to it. Safe harbor language which may be used by non-licensurees is set out in Rule 14-3.

- (b) Licensees and individuals who have practice privileges under Section 23 of this Act performing attest or compilation services must provide those services in accordance with applicable professional standards.
- (c) No person not holding a valid certificate or a practice privilege pursuant to Section 23 of this Act shall use or assume the title “certified public accountant,” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

COMMENT: This subsection prohibits the use by persons not holding certificates, or practice privileges, of the two titles, “certified public accountant” and “CPA,” that are specifically and inextricably tied to the granting of a certificate as certified public accountant under section 6.

- (d) No firm shall provide attest services or assume or use the title “certified public accountants,” or the abbreviation “CPAs,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a CPA firm unless (1) the firm holds a valid permit issued under Section 7 of this Act, and (2) ownership of the firm is in accord with this Act and rules promulgated by the Board.

COMMENT: Like the preceding subsection, this one restricts use of the two titles “certified public accountants” and “CPAs,” but in this instance by firms, requiring the holding of a firm permit to practice. It also restricts unlicensed firms from providing attest services.

- (e) No person shall assume or use the title “public accountant,” or the abbreviation “PA,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless that person holds a valid registration issued under Section 8 of this Act.

COMMENT: This subsection, and the one that follows, reserve the title “public accountant” and its abbreviation in the same fashion as subsections (c) and (d) do for the title “certified public accountant” and its abbreviation. The two provisions would of course only be required in a jurisdiction where there were grandfathered public accountants as contemplated by section 8.

- (f) No firm not holding a valid permit issued under Section 7 of this Act shall provide attest services or assume or use the title “public accountant,” the abbreviation “PA,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is

composed of public accountants.

COMMENT: See the comments following subsections (d) and (e).

- (g) No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act shall assume or use the title “certified accountant,” “chartered accountant,” “enrolled accountant,” “licensed accountant,” “registered accountant,” “accredited accountant,” or any other title or designation likely to be confused with the titles “certified public accountant” or “public accountant,” or use any of the abbreviations “CA,” “LA,” “RA,” “AA,” or similar abbreviation likely to be confused with the abbreviations “CPA” or “PA.” The title “Enrolled Agent” or “EA” may only be used by individuals so designated by the Internal Revenue Service.

COMMENT: This provision is intended to supplement the prohibitions of subsections (c) through (f) on use of titles by prohibiting other titles that may be misleadingly similar to the titles specifically reserved to licensees or that otherwise suggest that their holders are licensed.

- (h)(1) Non-licensees may not use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements. In this regard, the Board shall issue safe harbor language non-licensees may use in connection with such financial information.
- (2) No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act shall assume or use any title or designation that includes the words “accountant,” “auditor,” or “accounting,” in connection with any other language (including the language of a report) that implies that such person or firm holds such a certificate, permit, or registration or has special competence as an accountant or auditor, provided, however, that this subsection does not prohibit any officer, partner, member, manager or employee of any firm or organization from affixing that person’s own signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds therein nor prohibit any act of a public official or employee in the performance of the person’s duties as such.

COMMENT: This provision clarifies the language and titles that are prohibited for non-licensees. Like the preceding subsection, subsection (h)(2) of this provision is intended to supplement the prohibitions of subsections (c) through (f), by prohibiting other titles which may be misleadingly similar to the specifically reserved titles or that otherwise suggest licensure. In the interest of making the prohibition against the issuance by unlicensed persons of reports on audits, reviews, and compilations as tight and difficult to

evade as possible, there is also some overlap between this provision and the prohibitions in subsection (a). Safe harbor language is set out in Rule 14-3.

- (i) **No person holding a certificate or registration or firm holding a permit under this Act shall use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter, provided, however, that names of one or more former partners, members, managers or shareholders may be included in the name of a firm or its successor.**

COMMENT: This prohibition with regard to misleading firm names reflects a provision commonly found in ethical codes.

- (j) **None of the foregoing provisions of this Section shall have any application to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy or its equivalent in such country, whose activities in this State are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds such entitlement, who performs no attest or compilation services as defined and who issues no reports with respect to the financial statements of any other persons, firms, or governmental units in this State, and who does not use in this State any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.**

COMMENT: The right spelled out in this provision, of foreign licensees to provide services in the state to foreign-based clients, looking to the issuance of reports only in foreign countries, is essentially what foreign licensees have a right to do under most laws now in effect, simply because no provision in those laws restricts such a right. The foreign titles used by foreign licensees might otherwise run afoul of standard prohibitions with respect to titles (such as one on titles misleadingly similar to "CPA") but this provision would grant a dispensation not found in most laws now in force.

- (k) **No holder of a certificate issued under Section 6 of this Act or a registration issued under Section 8 of this Act shall perform attest services through any business form that does not hold a valid permit issued under Section 7 of this Act.**

COMMENT: See the comments following Sections 6(a), 7(a) and 8.

- (l) No individual licensee shall issue a report in standard form upon a compilation of financial information through any form of business that does not hold a valid permit issued under Section 7 of this Act unless the report discloses the name of the business through which the individual is issuing the report, and the individual:
 - (1) signs the compilation report identifying the individual as a CPA or PA,
 - (2) meets the competency requirement provided in applicable standards, and
 - (3) undergoes no less frequently than once every three years, a peer review conducted in such manner as the Board shall by rule specify, and such review shall include verification that such individual has met the competency requirements set out in professional standards for such services.
- (m) Nothing herein shall prohibit a practicing attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney's professional work in the practice of law.
- (n)(1) A licensee shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client,
 - (A) an audit or review of a financial statement; or
 - (B) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
 - (C) an examination of prospective financial information.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

- (2) A licensee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.
- (3) Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.
- (o)(1) A licensee shall not:
 - (A) perform for a contingent fee any professional services for, or receive such a fee from a client for whom the licensee or the licensee's firm performs,

- (i) an audit or review of a financial statement; or
 - (ii) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
 - (iii) an examination of prospective financial information; or
 - (B) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.
- (2) The prohibition in (1) above applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.
- (3) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this section, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending, for example, on the complexity of services rendered.

COMMENT: Section 14(n) on commissions is based on Rule 503 of the AICPA Code of Professional Conduct. Section 14(o) on contingent fees is based on Rule 302 of the AICPA Code of Professional Conduct.

(p) Notwithstanding anything to the contrary in this Section, it shall not be a violation of this Section for a firm which does not hold a valid permit under Section 7 of this Act and which does not have an office in this state to provide its professional services in this state so long as it complies with the requirements of Section 7(a)(2) or 7(a)(3), whichever is applicable.

COMMENT: Section 14(p) has been added along with revisions to Sections 23 and 7, to provide that as long as an out-of-state firm complies with the requirements of new Section 7(a)(2) or 7(a)(3), whichever is applicable, it can do so through practice privileged individuals without a CPA firm permit from this state.

WHY THIS APPROACH WILL WORK

FROM THE LEGAL PERSPECTIVE

At least 23 states already have some form of automatic consent to jurisdiction embedded in their accountancy laws or regulations. So far all of these have worked and none have been challenged in the courts. The new proposed version of Section 23, that underscores the automatic acceptance of jurisdiction once an individual offers accounting services in a state, strengthens what states already have and would make it clear to all that wherever someone practices they are subject to discipline by the local board of accountancy.

This approach is not unique to the accounting profession. Comparable automatic consent to jurisdiction provisions can be found in other uniform acts such as the Uniform Securities Act (USA) – 2002 Version.¹ Insurance regulation has a similar provision in the Uniform Insurers Liquidation Act, covering consent to service of process and court jurisdiction which has been upheld in state cases dealing with due process issues.² Comparable automatic consents to jurisdiction can be found in other contexts and have been upheld in court³.

The legal questions surrounding implementation of a no-notice practice by out-of-state CPAs in a state generally turn on three different aspects of jurisdiction, which are dictated in part by state statutes and are also limited by the federal and state constitutions. These are: (1) personal jurisdiction (the ability of the board to require the individual to defend an administrative action before the board); (2) subject matter jurisdiction (the requirement that an out-of-state CPA comply with another state's accountancy laws and rules); and (3) enforcement jurisdiction (a practical jurisdiction that pertains to whether a board can effectively enforce discipline over an out-of-state licensee even if there is personal and subject matter jurisdiction).

¹ The 2002 version has been enacted by Hawaii, Idaho, Missouri, Oklahoma, Iowa, Kansas, Maine, Minnesota, South Carolina, South Dakota, US Virgin Islands and Vermont and prior versions of the USA with similar consent to jurisdiction provisions were adopted by at least 37 states. This USA provision has not been successfully challenged.

² “*Conduct constituting appointment of agent for service.* If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection (a), the act, practice or course of business constitutes the appointment of the director as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.”

³ *Arnold Cahit, Ltd. V. La Metropolitana, Compania Nacional De Seguros* 26 Misc. 2d 751, 207 NYS2d 22 (1960) affirming provision in New York Insurance law that was based upon the Uniform Insurers Liquidation Act.

For example, the US Supreme Court upheld as a valid exercise of police power of the State a nonresident bus operator consenting to the appointment of the New York Secretary of State as its agent to accept service of process.

In the context of the practice of a profession, where there is a requirement that one comply with local laws when rendering professional services in a state, there is a strong argument that one has “availed oneself of the benefits of the laws of that state.” If, on the other hand, the law is silent or allows temporary practice but does not require consent to personal jurisdiction, the out-of-state individual might be subject to the state’s statutory requirement but not personally subject to the board’s jurisdiction. Consequently, the revised language being proposed for Section 23 is both needed and beneficial to state boards of accountancy.

FROM THE LICENSEE’S PERSPECTIVE

Serving the needs of clients outside of an individual CPA’s principal place of business has become reality in today’s business world. Everyday, CPAs and CPA firms are faced with navigating a complex set of varying regulations and procedures that will grant them practice privileges in other jurisdictions. In order for the capital market system to continue to prosper and grow, we need to ensure that we have a mobility system in place that will allow CPAs and their firms, as professional service providers, to serve the needs of American business, while at the same time ensuring that the public is adequately protected. In other words, we need a system that allows the right CPA to be in the right place at the right time -- without unnecessary obstacles that do not add to the protection of the public’s interest.

FROM THE BOARD’S PERSPECTIVE

Under the proposal, not only the individual, but also the firm consents to the jurisdiction and disciplinary authority of the board. Thus, if locating a CPA is difficult, the firm will be inclined to help locate the individual because it is in the firm’s best interest to cooperate with the board. This approach benefits the firm because it eliminates the cost of notice compliance and avoids firms having CPAs who are not in compliance despite a firm’s best efforts to be in compliance.

During the course of the year, there are literally thousands of CPAs crossing state lines to perform a portion of an entity’s audit in numerous locations. Also, in today’s electronic world, CPAs are offering advice to clients in other states on a regular basis or filing tax returns for their clients in other states without ever physically entering the states. State boards will rarely need to locate any of these CPAs for enforcement purposes. In this regard, it is noteworthy that: a) Ohio has had a no notice/ no fee approach for 45 years and, in the past ten years, it has had only two complaints against out-of-state licensees; and (b) Virginia has had this approach for over seven years and has had only one complaint-based enforcement case against a licensee from another state. It is the experience of these states, and the expectation of states more recently embracing this approach, that it is not necessary to incur the administrative costs, and impose a compliance burden on licensees, in order to effectively protect their constituents.

Under this approach, a board would be able to focus more of its human and financial resources on actual enforcement activities that protect the consumer, rather than employing administrative staff to receive and file information about the overwhelming number of CPAs who are in good standing in their home state.

Virtually all enforcement actions are the result of a person or entity filing a complaint. The complaint is generally going to be against the firm. But whether it is against the firm or an individual, the board will still receive the complaint and then contact the firm or the CPA. While Ohio and Virginia have eliminated notification, they have not had a problem in locating a CPA or CPA firm for enforcement cases.

While some states currently permit submission of a master notice to a state board, the list becomes outdated as soon as it is submitted because of frequent changes in personnel and assignments. The current proposal covers everyone and never becomes outdated.

As a practical matter, current laws limit the ability of state boards to take action against out-of-state licensees who commit unlawful acts in their state. If an out-of-state CPA practices in another state but fails to provide the required notification, the board may only be able to refer the matter to the CPA's home state board or the board may seek an injunction or pursue criminal charges. However, since the out-of-state CPA never consented to jurisdiction via the notification, the board would face the legal challenge of obtaining jurisdiction in court. Under the proposed change, in those cases which merit such an action, consent to jurisdiction is automatic – without the necessity of notification – so a board could initiate its own disciplinary proceeding against the out-of-state CPA, and impose whatever administrative discipline is appropriate. Although the board could not revoke a license issued by another state, it could revoke practice privileges. Of course, the board could also refer the case back to the licensee's principal place of business state, which would be obligated under this proposal to take the case (proposed UAA Section 23(b)). It is important to note that reliance on the principal place of business to suspend or revoke a license exists irrespective of whether states require notice.

POTENTIAL ISSUES

POTENTIAL LOSS OF REVENUES

Some state boards have raised loss of revenue as a possible obstacle in moving to a system that would not require notification – and fees. When all the costs of collecting and administering (including auditing compliance) for a notice-based program are considered against the revenues raised by notification, the amount of net revenue lost by foregoing notification fees, in most cases, may actually prove to be minimal.

In evaluating the significance of the net revenue loss issue, some state board members have recognized that there is a potential positive offsetting benefit to a state's own licensees. Their license holders would receive extra value by reason of possessing a license that could be used for practice privileges in most other states. Of course, reciprocal licenses would still be required when licensees change their principal place of business or open offices in other states. The possibility that a few states might be disproportionately affected by the change in revenue may require creative solutions, but the objectives to lower impediments to mobility and to enhance public protection should be the higher priorities of the UAA.

ABILITY TO LOCATE LICENSEES

Virtually all enforcement actions are the result of a person or entity filing a complaint. Often times, the complaint is also made against the firm. But whether it is against the firm or an individual, the board will still receive the complaint and then contact the firm or the CPA. Although Ohio and Virginia have done away with notification, they have not had a problem in locating the firm or CPA for enforcement cases. On the other hand, the cost of state board staff verification of information supplied on a practice privilege notice form can be expensive or prohibitively costly and may require a significant increase in staff.

A California consumer group has raised the issue of having an out-of-state licensee enter a state without giving any address to the accountancy board. This does not seem to be problematic, since clients will have an address or other contact information and they in turn will be able to supply the board with that information with which to take action, if necessary. Under the no notice/automatic jurisdiction structure of revised Section 23, a licensee of another jurisdiction can be served through the home state board. The state board where the violation occurred can revoke or suspend the practice privilege of the out-of-state licensee and the home state board can use that revocation to further discipline (including revoking or suspending) the home state licensee. The decision revoking or suspending the practice privilege can be used without further investigation by the home

state board to the same extent that the home state board could use a decision of another state board revoking a reciprocal license.

ELIMINATION OF WRITTEN NOTIFICATION

Many states already permit some form of no notice practice (through the concept of temporary or incidental practice). This has resulted in few, if any, enforcement problems. As described in the legal section above, different professions in various states have moved ahead without specific notification and have still been able to exercise their authority. It appears that written notification provides very little to the enforcement process. The cost, to both the state board and the practitioner, of providing notice just cannot be justified. Such resources would be best utilized by redirecting them to enforcement. Consequently, proposed Section 23 eliminates the written notice requirement.

TRUSTING OTHERS TO INVESTIGATE AND ENFORCE COMPLAINTS

Some states have expressed a concern that “other states” will not discipline their licensees for acts in “our state” and that “other states” have insufficient enforcement resources. Under Section 23(b), the state board where a licensee practices under a practice privilege does not have to rely on the other licensing state to do any investigation of violations occurring in the practice privilege state. UAA Section 10(a)(2) provides that state boards can discipline their licensees based on revocation or suspension of a practice privilege by another state board for disciplinary reasons. The practice privilege board can revoke or suspend the practice privilege, and the home state board can use that decision to discipline (including revoking or suspending) the license, without any further investigation. The section permits boards to use the other state board’s decision disciplining a practice privilege in the same way it currently uses discipline of a licensee by another state board.

COMMON QUESTIONS

“If I don’t require Notice I won’t be able to do anything to an out-of-state CPA who does bad work in my state.”

- Under the new proposed Section 23, you can do more against the out-of-state licensee because that individual will automatically be subject to the Board’s administrative jurisdiction.
- Thus the Board can initiate a proceeding against the out-of-state individual, serve notice on the individual’s home state board, conduct the hearing (even in absentia) and discipline the individual (by reprimand, civil penalty, or even revocation of practice privileges).
- The Board can post that discipline on its website and inform the state board in the individual’s home state for further appropriate action, i.e., revocation of license issued by the home state based upon the revocation of the practice privilege.
- Almost all states make a licensee’s violation of another state’s laws an automatic violation in the home state.

“If I don’t require Notice I won’t know who is practicing as a CPA in my state.”

- If you require Notice you only know the people who bother to give Notice.
- If you have a Temporary Practice or Incidental Practice or your law only allows you to regulate persons engaged in the “practice of public accountancy,” there are probably already a lot of out-of-state CPAs offering or rendering professional services in your state whom you don’t know about.
- Many of those CPAs that are not giving notice are good practitioners that do not intentionally violate the law but are not knowledgeable, or merely overlook giving notice.

“If I don’t require Notice I won’t know where an out-of-state CPA has his/her principal place of business.”

- If your disciplinary process is primarily complaint driven, the complainant should have that information unless the individual foolishly engaged accounting services without knowing where the CPA was located. If the out-of-state CPA is operating a web-based practice, the address of the CPA can usually be obtained by virtue of the domain registration.

- Often the violation is brought to light by a governmental agency (i.e., SEC, GAO, etc.) which can provide the CPA's principal place of business.
- This can also be effectively regulated by enforcing the UAA internet practice requirement that CPAs must affirmatively disclose the address of their principal place of business and state of licensure. [See UAA Rule 7-6 (Jointly Adopted 2002)].
- This is a requirement that can be easily enforced in the state of principal place of business.

“Can a law make an out-of-state CPA automatically consent to the Board’s jurisdiction unless the individual confirms that consent in a written notice?”

- If you depend upon notice and an out-of-state CPA fails to give Notice, you can sue the out-of-state CPA for failing to provide notice, but you will not have administrative jurisdiction over that individual so you will have to seek an injunction or an indictment.
- Also, since you are depending upon written Notice, you will not be able to serve process on the individual via the state of the individual’s principal place of business.
- You will have to obtain service out-of-state by service upon the person.
- To prosecute criminally, you may have to seek extradition.

“Can a state make someone practicing from out-of-state who offers or renders services into that state without physically entering the state automatically subject to that state’s laws by requiring a written notice?”

- If you cannot lawfully require automatic consent, you probably cannot even require written notice (and written consent).
- Such automatic consents to jurisdiction have been used and upheld in several other lines of interstate commerce, including securities, insurance, interstate transportation.

EXHIBIT I

When Registration Is Required

- 1. A CPA from a substantially equivalent (SE) state A has an engagement in state B to provide tax services.**

Requirements:

No notification or fee is required.

The CPA must comply with the laws of state B and is subject to the jurisdiction of state B.

-
- 2. A CPA from a non-substantially equivalent state C has an engagement in state B to provide tax services.**

Requirements:

The CPA must ascertain that he/she is SE either through NASBA's credentialing service, through the state board, or through self assessment.

No notification or fee is required if he/she is SE.*

The CPA must comply with the laws of the state B and is subject to the jurisdiction of state B.

** Note: A CPA from an SE state, or who is determined to be individually SE, is considered an SE CPA for the purposes of this document.*

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- 3. An SE CPA from state D is a sole proprietor and has an engagement in state B to perform a review.**

Requirements:

No notification or fee required.

The CPA must comply with the laws of state B (including peer review) and is subject to the jurisdiction of state B.

-
- 4. An SE CPA who is an employee or principle in a firm in his/her home state enters state B to perform a review.**

Requirements:

No notification or fee is required for the CPA.

No registration or fee is required for the firm.

The CPA and firm must comply with the laws of the state B (including peer review) and are subject to the jurisdiction of state B.

5. An SE CPA who is a sole proprietor in state D has an engagement to perform an audit of financial statements in state B.

Requirements:

The CPA must obtain a firm permit (register) and comply with laws of state B (including ownership and peer review).

The SE CPA entering state B is not required to notify or pay any additional fee, but is subject to the jurisdiction state B.

6. A CPA firm in state C engages to perform a review in state B.

Requirements:

The firm must issue the review through an SE CPA and must comply with the laws of state B (including ownership and peer review) and is subject to the jurisdiction of state B.

The SE CPA(s) entering state B are not required to notify or pay a fee, but are subject to the jurisdiction state B.

7. A CPA firm in state C engages to perform an audit of financial statements in state B.

Requirements:

The firm must issue the audit report through an SE CPA.

The firm must obtain a permit (register) including the name of an SE CPA associated with the firm.

Neither the associated CPA, nor any CPA performing the audit, is required to notify or pay a fee, but is subject to the jurisdiction of state B.

8. An SE CPA employed by a non-CPA firm that is not qualified for registration (a firm permit) in his/her home state, engages to perform a review in the state B.

Requirements:

The SE CPA must sign the review in his/her own name, and must comply with the laws of state B (including peer review).

No notification or fee is required

9. A non-CPA firm from state D engages to perform an attest service in state B.

Requirements:

The firm would have to first register in state D to be eligible to provide the service in state B.

The firm would have to meet the requirements described in Scenario 6 or 7.

EXHIBIT II

WHY THE NOTICE REQUIREMENT IS BROKEN

What is “Notice”?

“Notice” is usually a code word for “application and fee”

- Applications range from zero to four pages.
- Fees range from zero to \$434 to \$60 per engagement.
- Processing ranges from instant to six months.
- Forms range from online to paper only plus original transcripts.

Who must provide “Notice” ?

It depends on how much you do - Those who must provide Notice range from:

- Everyone who offers or renders professional services in the state
- Everyone who uses the title “CPA” in, to or through the state
- Only persons who engage in audit/attest services. (at least 5 states)
- Only persons who actually “set foot in state” (20 states)
- Only persons who do more than the following in the state
 - 10 percent of your total work
 - 12 days
 - 10 days
 - 49 percent
 - 60 days
 - “temporary or periodic accounting work incidental to a regular practice in another jurisdiction”

It depends on what you do:

- Individual tax returns (32 states = yes)
- Business tax returns (33 states = yes)
- Teach CPE (at least 10 states require notification for teaching CPE)
- Consulting services (At least 30 states require notice for consulting services)
- Casino audits.

It depends on how you render the services:

- Online (25 states = yes)
- Only if you set foot in a state (20 states = yes)
- By mail or by phone (approximately 34 states = yes).

It depends on who you are

- Sole practitioner (No notice required in one state)
- In a firm with an office in the state (A majority of states)
- From outside the US (Most state rules favor foreign practitioners).

For a majority of states the current system often only protects your citizens:

- If you received Notice
- If the CPA physically enters your state
- If the CPA practices in your state more than 10 days
- If the CPA does something other than tax services.